

ECOCIDE

– an evolving legislative concept
in the light of care for creation

Orsolya Johanna
Zsigmond-Sziebig

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Ecocide - An Evolving Legislative Concept in the Light of Care for Creation

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Orsolya Johanna Zsigmond-Sziebig

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ENERGIAÜGYI MINISZTERIUM

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*"The world is as delicate and as complicated as a spider's web," he wrote.
"If you touch one thread you send shudders running through all the other threads.
We are not just touching the web. We're tearing great holes in it."*

Gerald Durrell

DEDICATION

In memory of Professor László Bodnár (1944–2024), whose morality and knowledge have formed generations of international lawyers. Professor Bodnár's ground-breaking publication concerning ecocide at the beginning of the 1970s served as a basis for my research into the international aspects of environmental crimes. I genuinely appreciate the pioneering international lawyers at the University of Szeged Faculty of Law and Political Sciences.

FOREWORD

The writing process is time-consuming, and it is a period of hardship that continuously forms the writer. As *William Plomer* said, “*Creativity is the power to connect the seemingly unconnected.*” This is what I felt in relation to ecocide, which can be embedded in different branches of law and the roots of environmental protection. My first encounter with ecocide happened several years ago, before the acceptance of the definition by the International Expert Panel. After defending my PhD thesis in 2019 concerning CITES, I felt that international environmental law still had a long way to go. In the last couple of years, I have been reading a growing amount of literature about the possibility of implementing ecocide in various legal areas. Still, most scholars have no idea even about the existence of this concept. In typical cases, when I answer the general question of what my research field is, the reply results in another question: Really, what is ecocide? This book aims to answer this often-raised issue from the point of view of international law. I aimed to collect the different scopes of terminology and means of implementation. As lawyers, we usually stay within the boundaries of pure academic thinking. With this book, I had the opportunity to overstep the traditional boundaries of environmental law and include other aspects, such as ethics, morality, and religious beliefs, without compromising the academic value of the topic. However, I do not think that environmental law can be separated from the personal view of the academic researcher, as our belief systems greatly influence the ways in which we approach environmental issues. I strongly believe that we are all responsible for the protection of our created world, and we are at the very last minute to defend the beauty and diversity of our shared home.

“The Lord God took the man and placed him in the Garden of Eden to work it and watch over it.”¹

¹ Bible, Genesis 2:15.

I would like to close this short foreword with a few lines of appreciation. Without the unfailing support of my family, especially my parents and husband, this book would still be a mere thought. They provided the space and the surroundings to work on my ideas. Now, my research outcomes and results are manifested in written form. I consider this book to be a beginning since, as is usual with such undertakings, there are more questions than answers. But as scholars, I believe this is our task. To generate thoughts, debate, and collect new inputs to form concepts, then to modify or even reject our previous standpoint. I recommend this book to all who are interested in international law, ecocide, or simply protecting our environment.

Last but not least, I would like to thank the Pázmány Péter Catholic University for including me in the project that made it possible for this book to be published.

Budapest and Szeged, Hungary
Spring 2025

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CHAPTER 1.

FOUNDATION

*"If we wish to be good, we must be first wise."*²

Humanity has found its way to a 'modern' era, in which technological development radically changed how we live our everyday lives. Since the 'Great' Industrial Revolution, a relatively short period compared to the history of humanity, there have been a number of adverse ecological changes. It could be said that since we reached the development curve from steam engines to microchips, the natural environment has been changed to an extent that now threatens the adequate living conditions and survival of humanity. Although humans are only one element of the ecosystem, we are the ones who have the power to cause the most significant changes to the environment. Recognition of global environmental problems has led to the emergence of a new area of law, International Environmental Law, which has become one of the most dynamic and regulatory-rich systems of our time in just one century. Before providing a history and a precise definition of International Environmental Law, let us examine precisely what global environmental problems have led to the emergence of this relatively new area of regulation.

The Great Industrial Revolution was a process of economic transformation that started in the 18th century in the United Kingdom and later spread throughout several parts of the world. As a result of the Great Industrial Revolution, economies based on agriculture and craftsmanship were replaced with large-scale industrial installations, and

² Shrader-Frechette, Kristine: Ethics and Environment. World Health Forum, Vol. 12. 1991. pp. 320.

the conditions of human existence were fundamentally reshaped. Among its many positive effects, including increased productivity, prosperity and access to health services, the technological explosion led to a fossil fuel-based economy and the environmental problems of our time. We are experiencing the effects of climate change and global warming daily, even in the so-called “developed” areas of the world. In recent years, unpredictable weather, periods of drought and subsequent flooding have all been attributed to climate change.³

Over time, industrialised settlements attracted more and more people, but these cities often lacked the requisite facilities to host the flood of newcomers. The following description by *Hobsbawm* provides a perceptive description of urbanised areas.

*“And what cities! ... smoke hung over them and filth impregnated them, the elementary public services – water supply, sanitation, street-cleaning, open spaces, and so on – could not keep pace with the mass migration of men into the cities, thus producing, especially after 1830, epidemics of cholera, typhoid and an appalling constant toll of the two great groups of nineteenth century urban killers – air pollution and water pollution or respiratory and intestinal disease.”*⁴

“Forced” into an urbanised environment, man has lost his connection with nature and has systematically and extensively modified the environment around him. Recent years have shown that humanity’s current way of life is unsustainable and that a radical change in the cycle of production and consumption is needed. Through sustainable communities and green democratic values, we can rediscover the potential of the natural way of life and make our urbanised communities more liveable and inclusive for future generations. We have to find our way back to the original roots of living and tear ourselves from expectations, needs and the comforts of the 21st century. We have to learn from those who still consider themselves as an integral part of nature that surrounds them.

One of the most sensitive issues of environmental conservation efforts correlates with overpopulation. The finite nature of natural resources is a particular problem in the context of a continuously growing population. In 2024, more than 8 billion people inhabited the Earth, and some estimates suggest that by 2100, the African continent alone will be home

³ Rafferty, John P.: *The Rise of the Machines: Pros and Cons of the Industrial Revolution*. Britannica. Available at: <https://www.britannica.com/story/the-rise-of-the-machines-pros-and-cons-of-the-industrial-revolution>.

⁴ Hobsbawm, Eric: *Bandits*. Weidenfeld & Nicolson, 1989, p. 86.

to almost 4.5 billion, and the world population could exceed 10 billion.⁵ Population growth continues to be intense, but there are significant differences between regions, especially in terms of long-term predictions. While Europe and North America will grow by only 2% by 2050, the Sub-Saharan region will double its population. In some countries, migration will also have a significant impact. The population explosion is undoubtedly an obstacle to achieving sustainable development objectives. Still, in some regions (Latin America, Sub-Saharan Africa, the Caribbean, and Asia), there is also an opportunity for the rising generations due to the increase in the working-age population. We must not forget that climate change and adverse environmental effects, including the lack of water, are leading to forced climate migration. Based on the data of the World Bank, it is estimated that climate change will displace more than 140 million people within their home countries in sub-Saharan Africa, South Asia, and Latin America by 2050.⁶ The international legal framework of refugees is also challenged by environmental migration, as the traditional legal instruments cannot be applied to climate refugees due to terminological restrictions. Of course, even if the persons concerned do not qualify as refugees under convention law, they can seek asylum within the framework provided by international law, for example, on customary grounds. In recent years, there have been regional efforts to address the legal situation of climate refugees. Still, the international community has not yet undertaken to amend the Geneva Convention⁷ or to develop relevant international law in this regard. Until then, the categories of “*climate refugees*”, “*environmental refugees*”, “*environmental displacement*”, “*environmental migration*”, and “*disaster displacement*” remain unclear and also, how these asylum seekers must be handled by the states where they arrive.⁸

Another global environmental issue is the finite nature of resources and their sustainable exploitation and use. It was only in the 1970s that the depletion of naturally occurring resources began to attract the attention of the international community. The speech of US diplomat *Adlai Stevenson* at the UN Economic and Social Council meeting is still quoted as an

⁵ Population Pyramids of the World from 1950 to 2100. Available at: <https://www.populationpyramid.net/>.

⁶ The World Bank: *Groundswell: Preparing for Internal Climate Migration*. Available at: <https://www.worldbank.org/en/news/infographic/2018/03/19/groundswell---preparing-for-internal-climate-migration>.

⁷ 1951 Refugee Convention and its 1967 Protocol (Protocol relating to the Status of Refugees).

⁸ On climate refugees, see Horváth, Valéria: *The Right to Seek Asylum of Climate Refugees*. Acta Humana: Hungarian Centre for Human Rights Publications. Vol. 9. No. 1. 2021, pp. 119–136.

example of how the vision of nature has started to change in the second half of the last century:

*“We travel together, passengers on a little spaceship, dependent on its vulnerable reserves of air and soil, all committed for our safety to its security and peace, preserved from annihilation only by the care, the work, and, I will say, the love we give our fragile craft. We cannot maintain it half fortunate, half miserable, half confident, half despairing, half slave—to the ancient enemies of man—half free in a liberation of resources undreamed of until this day. No craft, no crew can travel safely with such vast contradictions. On their resolution depends the survival of us all.”*⁹

For a long time, the ‘frontier or cowboy ethic’ had dominated environmentalism, ascribing to man dominance and superiority over nature.¹⁰ Given the finite nature of natural resources, a variety of environmental ethics have emerged, including the so-called “lifeboat” theory, which argues that the survival of the Earth and its ecosystems is at risk and advocates that the well-being of nature as a whole takes precedence over the interests of individual humans. In contrast to the lifeboat ethic, the “spaceship ethic” has emerged, where the well-being of nature and the well-being of humanity are closely intertwined, and neither can take precedence over the other. Stevenson’s speech referred to this theory. This latter position implies acceptance of the Earth’s ultimate carrying capacity, the renewal and recycling of resources, and the avoidance of pollution, all aspects which are now embodied in the principle of sustainability.¹¹

The increasing levels of air pollution, which, although mainly a problem in cities with advanced industry, have had the typical effect of a technological explosion and have led to a new sectoral area of environmental regulation. A striking example of air pollution was the smog in London in 1952, which resulted in the deaths of thousands of people. London’s air quality had been steadily deteriorating since the 13th century due to coal burning, which enveloped the city in a thick cloud of smoke. However, the situation worsened from the late 1700s onwards, precisely due to the effects of the Industrial Revolution. The general picture of London is

⁹ Caldwell, Lynton K.: The Corning Polity of Spaceship Earth. In: Roelofs, R. T. – Crowley J. N. – Hardesty, L. (Eds.): *Environment and Society*. Englewood Cliffs, New Jersey, Prentice-Hall, 1974, p. 250.

¹⁰ Shrader-Frechette (1991): pp. 311–321.

¹¹ Hardin, Garret: *Lifeboat Ethics: the Case Against Helping the Poor*. Psychology Today, September 1974.

vividly described in the writings of *Charles Dickens* and *Arthur Conan Doyle*.¹² Air pollution levels continue to cause serious health problems today, which is why EU environmental legislation has made it a priority to reduce air pollution levels.

Global climate change and global warming threaten the entire Earth's ecosystem. As a result, since the 1992 Rio Conference, intensive efforts have been made to establish conventions to curb further adverse changes, but recent estimates suggest that current commitments are far from sufficient and need to be renewed and expanded.

Habitat degradation, biodiversity loss, and species extinction are interlinked phenomena and are today's most critical environmental challenges. The persistence of species is under significant threat from the loss of natural habitats and the negative impacts of global warming, such as permanent climate change and rising or falling temperatures. However, a leading cause of increased extinction is the economic exploitation of species. The extinction of species is essentially a natural phenomenon in the living world. Still, human activity in recent centuries, especially in the 20th century, has led to the disappearance of a much higher number of species than the natural extinction, ranging from 5 to 20 thousand species per year. If this trend continues, around 10 per cent of all species could be threatened with extinction.¹³ Today, communities living in symbiosis with their environment have been replaced mainly by urbanised societies. Urbanisation itself has a negative impact on the environment, including concentrated air pollution and waste production and alteration of the natural environment for industrialisation and urban development.¹⁴

Another issue is that some criminal activities also have a negative impact on the environment and the survival of species. Today, a number of organised criminal groups are involved in the illegal trade of endangered species, either in derivatives such as products of traditional medicine or in live specimens. This phenomenon has also attracted the attention of the international community, as the financial flows of illegal trade have now reached the level of revenues from drug and arms trafficking. The United Nations Office on Drugs and Crime (UNODC) and other international entities such as Interpol and Europol are also working to

¹² Martinez, Julia: *Great Smog of London*. Britannica. Available at: <https://www.britannica.com/event/Great-Smog-of-London>.

¹³ Kaiho, Kunio: *Extinction magnitude of animals in the near future*. Nature, Scientific Reports, Vol. 12. 2022, p. 19593. DOI: <https://doi.org/10.1038/s41598-022-23369-5>.

¹⁴ Zipperer, Wayne C. – Northrop, Robert – Andreu, Michael: Urban Development and Environmental Degradation. Oxford Research Encyclopedia of Environmental Science, 2020, pp. 1–25. DOI: <https://doi.org/10.1093/acrefore/9780199389414.013.97>

combat serious environmental crime. These include trafficking in wildlife products or specimens, illegal mining, illegal deforestation and logging, illegal trafficking and illegal transport and storage of dangerous substances (ozone-depleting substances or other polluting substances), and illegal, unreported or unregulated fishing.¹⁵ In addition to the above, a number of environmental and nature conservation issues require the attention of the international community, which is reflected in the adoption of international treaties in the areas concerned. These other issues, such as the regulatory regime for ozone-depleting substances, measures to control invasive alien species and classical nature conservation, will be discussed in relevant chapters.

Another core keyword of the 21st century is sustainable development. Although the concept of sustainable development can be detected in the early documents of environmental protection accepted within the UN system, the exact definition was only established at the end of the 1980s. The World Commission on Environment and Development was a sub-organization of the United Nations led by *Gro Harlem Brundtland*¹⁶. The outcome of the World Commission's work "*Report of the World Commission on Environment and Development: Our Common Future*"¹⁷ established the still-quoted definition of sustainable development as the following:

*"Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts: the concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority should be given; and the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs."*¹⁸

Within the framework of the United Nations, members of the international community accepted programmes aiming to achieve sustainability. The Millennium Development Goals (MDGs) provided a precise plan towards

¹⁵ TRAFFIC: Illegal Wildlife Trade. Enhancing Responses to Wildlife Crime and Illegal Trade. Available at: <https://www.traffic.org/about-us/illegal-wildlife-trade/>.

¹⁶ First woman Prime Minister of Norway and former Director-General of the World Health Organization.

¹⁷ The World Commission on Sustainable Development: *Our Common Future*. 1987. Available at: <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>.

¹⁸ Ibid, p. 40.

eight main targets from 2000 to 2015.¹⁹ Later, learning from the challenges and difficulties experienced, the Sustainable Development Goals (SDGs)²⁰ retrieved the earlier action plan for the period 2015-2030, introducing seventeen new goals. Among the targets, there are several that are of environmental importance, including inclusive, safe, resilient, and sustainable cities and human settlements.

Building green, sustainable communities is an essential element of the UN's sustainability-related goals. Green communities have an indisputably vital role to play in achieving climate goals, as the bottom-up approach has already been proven to be beneficial for a number of nature and environment-related programmes. These include, among others, efforts to protect endangered species, where social embeddedness has largely determined the actual implementation of relevant international and national efforts. A high level of human rights, particularly third-generation human rights, is an indispensable element of building a green democracy. In parallel with the focus on climate issues, there has been a growing focus on third-generation human rights, including the right to a healthy or liveable environment of good quality, the right to water and the right to food. The link between a high level of human rights and sound environmental quality is well established. Furthermore, the rights of particularly vulnerable (marginalised) groups, whose opportunities are further limited by the negative impacts of climate change, should be assessed as a priority issue today. Despite the lack of a unified concept of green communities and green democracy in the literature, its main building elements, which can be legally articulated, can be identified. Lastly, although digitalisation and artificial intelligence are greatly facilitating the green transition, we must, unfortunately, also take into account certain negative consequences that are contributing to the deterioration of the environmental problems of our time.²¹

Sustainability and ecocide are strongly related to each other. In my opinion, numerous SDGs can be directly and indirectly connected to ecocide. Firstly, SDG6, “*Ensure availability and sustainable management of water and sanitation for all*”, resonates with the human right to water

¹⁹ UN: Millennium Development Goals. Available at: <https://www.un.org/millennium-goals/>.

²⁰ UN: The 17 goals. Available at: <https://sdgs.un.org/goals>.

²¹ See Sziebig, Orsolya Johanna: The human rights implications of green democracies in the era of digitalisation
In: Milan, Pocuca (Ed.): *XXI International Scientific Conference „Legal days – Prof. Slavko Carić, PhD „The Responses of legal sciences to the challenges of modern society”*. Faculty of Law for Commerce and Judiciary, Novi Sad, Serbia, 2024, pp. 329–340.

and sanitation. In the relevant chapter, the importance of ecocide will be highlighted in relation to the third generation of human rights, as their enjoyment is endangered by activities that fall within the scope of severe environmental degradation. In the same logic, SDG1, “*End hunger, achieve food security and improved nutrition and promote sustainable agriculture*”, relates to the right to food, and it is well known that the history of ecocide is inseparable from the war efforts, destroying and poisoning agricultural land in Vietnam. How to ensure sustainable and resilient agricultural production, safeguarding the right to food for millions of people in the midst of the negative impacts of climate change and other threats, including wars and other armed conflicts, is a preeminent issue today. The goals concerning climate action (SDG13) and nature protection underwater and on land (SDGs14,15) can be directly linked with ecocide, including SDG15 to “*protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss*”. The survival of ecosystems is essential for a healthy, liveable human environment. Nowadays, we are facing unprecedented habitat loss and destruction as more and more land is being driven to provide for human needs. Furthermore, armed conflicts have historically had significant negative impacts on the natural environment, which are still being felt today. One need only think of the period of the World Wars when years of fighting across the Globe caused irreparable damage to both the human-built and natural environment.

Meanwhile, climate litigation is a growing phenomenon. In recent years, the “*greening*” practice of international judicial fora has emerged, including the series of environmental cases brought before the International Court of Justice, the Permanent Court of Arbitration’s procedures in environmental cases, and the establishment of an independent environmental judicial forum. Although the latter at present seems more utopian than a reality, the idea is gaining ground. The difficulties outlined, particularly given the lack of jurisdiction of the human rights courts, may again raise the need to establish an independent environmental court. The ICE Coalition²² is the leading voice calling for the creation of an international environmental court, citing a significant shortcoming of the current international legal system. The Coalition brings together various stakeholders of environmental, legal, economic, academic, and civil society. Their main objectives include the creation of a specialised judicial forum

²² Creating the International Court of Environment.

that can adequately assess the complex scientific evidence.²³ In addition, ensuring access to justice for states and the non-state sector and the establishment of *erga omnes* obligations are also important aspects. Finally, the need for developing a modern and clear international environmental law is also raised, the effective implementation of which would be ensured through the court's compulsory jurisdiction.²⁴ In February 2011, the Coalition also adopted the draft statute of the court to be established, which, starting with organisational issues, sets out the basis for the court's operation.²⁵ The only place where the ICE sets out the law applicable to decisions is in relation to the advisory opinion procedure. From the general wording and formulation of the statute, it can be inferred that any instrument relating to environmental law arising from disputes would be applied, in particular, international agreements and conventions with case-by-case conflicts of law. It can be concluded that any instrument relating to environmental law arising from the disputes would be applied, particularly international agreements and conventions that may conflict with the norms. Specifically, in the advisory opinion procedure, the court may take into account international conventions and applicable private law treaties; general rules and principles of international environmental law; relevant national law, following generally accepted rules of private international law and established practice at the national and international levels; relevant scientific and technical issues, expertise; any other principles, rules or standards that are considered appropriate, including justice.²⁶ In the spirit of the accepted draft statute, ecocide legislation could also appear in the cases of the future environmental judicial forum.

The already existing international forums also have to face a growing share of environmentally related cases, although the International Court of Justice only tends to show "cautious" steps towards environmentalism. Among the relevant cases, the *Gabčíkovo-Nagymaros Project*²⁷ was one of the early examples of how states tried to provide environmental justification as a basis for exemption from liability. However, in that case, the ICJ did

²³ On the role of natural science in judicial reasoning, see Sulyok, Katalin: *Science and Judicial Reasoning: The Legitimacy of International Environmental Adjudication*. Cambridge University Press, Cambridge, 2022.

²⁴ ICE Coalition: *Creating the International Court of Environment*. Available at <http://www.icecoalition.org>.

²⁵ ICE Coalition: *Draft Protocol for an International Court for the Environment*, February 2011. Available at: <https://www.icecoalition.org/resources>.

²⁶ IV. Chapter Art. 11.

²⁷ *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, Judgment, 1. C. J. Reports 1997, p. 7. para 140.

not accept the “*ecological necessity*” as a reasoning of Hungary but emphasised the importance of environmental considerations.²⁸

“Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind – for present and future generations – of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.”

Environmental protection and nature conservation can be approached from various angles. We can talk about the need for protection as a moral or ethical obligation that is a shared responsibility of all human beings. At the same time, environmental protection is also an obligation since there are numerous legal provisions at both internal and supranational levels. Over the last few decades, in the European sphere, the European Union has also been intensively involved in environmental legislation, including the issue of liability for environmental damage. More recently, the legislation has been complemented by the expansion of the regime of individual criminal liability with the adoption of the new Directive²⁹ on the protection of the environment through criminal law.

The responsibility for severe environmental destruction came to the front in the last few years, and with the rediscovery of the ecocide concept, using forgotten ideas that have been reinvigorated. As we will see in the history of ecocide, it is a “*new, yet old*”³⁰ concept, as the original idea was already invoked at the beginning of the 1970s. The modern era strongly

²⁸ In this case, a recent book was published in Hungarian. See Nagy, Boldizsár: Bős Nagymaros: Nemzetközi jog, politika, környezetvédelem – Írások az erőműrendszer történetéről és a jogvitáról. [Gabčíkovo-Nagymaros: International law, politics, environmental protection – Writings on the history and legal dispute of the power plant]. Gondolat Publishing, Budapest, 2024.

²⁹ The new Environmental Crime Directive was adopted on 11 April 2024 and entered into force on 20 May 2024. The Directive support the protection of the environment through criminal law and replaces the ‘original’ 2008 Environmental Crime Directive.

³⁰ Terminology used by the author in the presentation „*Ecocide, the new yet old international crime – shifting approaches and possible outcomes*” at the International

relates to the work of Polly Higgins³¹, who “*resuscitated*” ecocide and proposed a newly formed definition to be included in the Statute of the International Criminal Court. In her primary work on ecocide entitled “*Eradicating Ecocide*”,³² Higgins explored the history of environmental destruction and provided new answers on how to regulate ecologically damaging activities and determining which liability regimes are applicable to the matter. Her words articulate this unique approach towards ecocide:

*“I am someone who cares deeply about the Earth. I’m also a lawyer who loves the Earth. It’s not often lawyers talk about love – and it can feel strange to do so. However, I believe love and law can be brought together and when the two meet, the potential to create new laws that put people and planet first is born.”*³³

The history of ecocide is inseparable from the protection of the environment in armed conflicts. Earlier, the Vietnam War Effort and the Gulf War were striking examples of ecological destruction. More recently, the Russo-Ukrainian armed conflict has raised attention on the topic. As a result of the ongoing war, the natural environment has already suffered tremendous irreversible harm. As I will discuss later on, environmental destruction as a method of warfare is ‘nothing new under the sun’. Systematic destruction or pollution of the natural environment was used to break the power of the enemy in ancient times. Defenders often denied attackers’ basic necessities, or attackers induced defenders to surrender. It is a well-known fact that military techniques harm the agricultural and wildlands and are increasingly capable of disrupting natural habitats. As Falk highlighted:

*„environmental warfare is a dramatic reminder of the extent to which the planet as a whole must mobilise a response to the ecological challenge to sustain life on earth and beat back reversion to barbarism emanating from the “advanced” regions and applied to those that are relatively backward.”*³⁴

Biennial Conference organised by the Faculty of Law of the West University of Timișoara in 2020.

³¹ Pauline Hélène “Polly” Higgins (4 July 1968 – 21 April 2019).

³² Pauline Hélène “Polly” Higgins: *Eradicating Ecocide 2nd edition: Laws and Governance to Stop the Destruction of the Planet*. Shephard-Walwyn, 2016.

³³ Higgins, Polly: Syntropic, Season #1, Episode #11 – Polly Higgins -The Earth needs a good lawyer 7 November 2014. Available at: <https://syntropic.world/season-1-episode-11-polly-higgins-earth-needs-good-lawyer/>.

³⁴ Falk, Richard A.: Environmental Warfare and Ecocide — Facts, Appraisal, and Proposals. Bulletin of Peace Proposals, Vol. 4. No. 1. 1973, p. 80.

As a result of the Russo-Ukrainian armed conflict, the Ukrainian Ministry of Environmental Protection and Natural Resources established a website, “EcoZagroza”, where consequences of military actions and impact on the environment are constantly published. Moreover, the Ministry identified and estimated the environmental costs of military actions.³⁵ The most well-known event was the breach of the Nova Kakhovka Dam on 6 June 2023, which resulted in 150 tonnes of oil and other toxic substances entering the Dnipro in the Kherson Oblast.³⁶ The war resulted in air, water, land, and soil pollution and damage to the ecosystems. Furthermore, natural habitats, including forests, protected biosphere reserves, and national parks, are degraded. Environmental harm, acts of deforestation, explosions, the building of fortifications, and the poisoning of the soil and water have become daily problems in the Ukrainian territory. The environmental destruction caused by Russian aggression in Ukraine is not in question, but it is very difficult to collect accurate data on the actual damage. On the one hand, access to the territory by the expert panels is often restricted due to the ongoing armed conflict. Furthermore, in order to break the aggressor’s power, the destruction of particular objects has been deliberate and tactical, which, by definition, also constitutes damage. Environmental destruction has an impact on the environmental rights of those living in the area, and today, countless people live in polluted conditions in regions that are not considered safe, given the levels of water and air pollution.³⁷

Environmental damage directly affects the daily lives of the Ukrainian population, but its transboundary effects should not be forgotten. The damage to Ukrainian agriculture has an impact on global food prices and grain supplies. Furthermore, a possible nuclear disaster would have global consequences.³⁸ The environmental effects of the Russo-Ukrainian war should not be trivialised, given that Ukraine is a key element of biodiversity and natural habitats in Europe. The environmental impact of the armed conflict extends beyond Ukraine’s borders, and its ecosystems and rivers,

³⁵ EcoZagroza. Available at: <https://ecozagroza.gov.ua/>.

³⁶ On the issue of the attack against the Kakhovka Dam, see Maruf, Shah: *Environmental Damage in Ukraine as Environmental War Crime under the Rome Statute; The Kakhovka Dam Breach in Context*. Journal of International Criminal Justice, Vol. 22. 2024, pp. 99–126. DOI: <https://doi.org/10.1093/jicj/mqae004>.

³⁷ Polukarov, Yu. – Kachynska, N. – Polukarov, O. – Zemlyanska, O. – Mitiuk, L.: *Impact of the full-scale war in Ukraine on the Environment: Environmental damage assessment*. Law. Human. Environment, Vol. 15. No. 1. 2024, p. 95. DOI: [10.31548/law/1.2024.85](https://doi.org/10.31548/law/1.2024.85).

³⁸ See Kecskés, Gábor: *The protection of nuclear installations in time of armed conflict – Old rules, new challenges*. Hungarian Journal of Legal Studies. Vol 64. No. 4. 2024, pp. 508–519. DOI: <https://doi.org/10.1556/2052.2024.00511>.

which are shared with neighbouring countries, are also adversely affected. Furthermore, the long-term impacts are unknown but are undoubtedly severe and irreversible.³⁹ In the case of armed conflicts, the question of how to establish a formalised system of responsibility and sanctions for post-war justice is a key issue. It is essential to note that the regimes of international legal responsibility and the international legal sanctions, although interrelated, are distinct phenomena.⁴⁰ Furthermore, in the context of environmental damage, it should be noted that, in my view, restoration to the original state is, by definition, impossible and that compensation, to an appropriate degree, is the only option. The end of the armed conflict between Russia and Ukraine is unpredictable, and even after a possible peace, the time needed to restore nature is incalculable. However, early peace in Ukraine would prevent further environmental damage and further deterioration of European ecological systems.

*“Then I said, “For how long, Lord?” And he answered: “Until the cities lie ruined and without inhabitant, until the houses are left deserted and the fields ruined and ravaged,”*⁴¹

I also believe that environmental lawyers are necessary to “test the waters” for new concepts and liability regimes to fight ecological destruction and establish enforceable legislation to prosecute those who harm the environment the most. The current trends proved that, meanwhile, adverse environmental changes are widely recognised by scientists, activists, and members of the international community, and political changes are greatly influencing globalised efforts to fight climate change and other environmental problems. The strict regime of states’ responsibility for internationally wrongful acts resulted in a situation where grave environmental destruction remains unpunished. Also, the applicability of international law in cases involving multinational corporations is even more limited, so the great polluters are still conducting environmentally destructive practices. Climate litigation provided examples of environmentalism, but we are still at the dawn of such procedures, and I think the actual effect of these proceedings is yet to be seen. The question

³⁹ Rawtani D. – Gupta G. – Khatri N. – Rao PK. – Hussain CM.: *Environmental damages due to war in Ukraine: A perspective*. Science of the Total Environment, Vol. 850. 2022. p. 157932. (pp. 1–5). DOI: 10.1016/j.scitotenv.2022.157932.

⁴⁰ Kravets, O. – Byrkovych, T. – Byrkovych, O. – Gorinov, P. – Baklan, O. – Rybchych I.: *Legal Consequences of Economic and Environmental Damage Caused to Ukraine by Russia*. Economic Affairs, Vol. 69. No. 1. 2024, p. 576. DOI: 10.46852/0424-2513.2.2024.19.

⁴¹ Isaiah 6:11.

is whether ecocide could provide the solution to the problems mentioned above and fill the existing legislative gaps in responsibility regimes.

It is important to discuss the issue of ecocide because the need for further legislation to protect the environment is fundamentally questionable. As Minkova highlighted in a recent publication, “*the assumption that the progressive institutionalization of international legal rules would offer greater protection to nature*” is doubtful.⁴² The greatest challenge from the perspective of international environmental law lies precisely in the specificity of legal sources. Most multilateral environmental law conventions do not establish a strict liability regime, which means that states in breach of their obligations can be held accountable under the general regime of state responsibility for internationally wrongful acts under international law.⁴³ Furthermore, the often too general, framework-like rules of environmental conventions mean that there is no question of specifically enforceable obligations.

The primary goal of this book is to provide an insight into the history, definition and future of ecocide, placing it within the “*corpus*” of public international law. The scope aligned with the embeddedness of ecocide, including all relevant aspects, with particular regard to international humanitarian law, human rights law, and international criminal law. It also collects the relevant definitions of ecocide in law and literature. As I have already emphasised, environmental protection has a strong moral and ethical basis, and every one of us is responsible for preserving and protecting our created world. With this book, I wanted to overstep the traditional boundaries of legal analysis and include eco-ethical and religious considerations without compromising the academic value of the content.

It is crucial to understand how penalising severe environmental degradation can enhance sustainable livelihoods and human settlements. Over the last hundred years of environmental regulation, we have seen a move away from purely anthropocentric, human-centred norms towards ecocentric, nature-centred regulation. Ecocentrism is considered the most comprehensive approach, focusing on the environment as a whole, not just on the value of all living things (*biocentrism*) or animals (*zoocentrism*).⁴⁴

⁴² Minkova, Liana Georgieva: *Ecocide, Sustainable Development and Critical Environmental Law Insights*. Journal of International Criminal Justice, Vol. 22. Issue 1. March 2024, p. 85. DOI: <https://doi.org/10.1093/jicj/mqae006>.

⁴³ See Voigt, Christina: International Environmental Responsibility and Liability. In: Rajamani L. – Peel J. (Eds.): *The Oxford Handbook of International Environmental Law*. 2nd Edition, Oxford University Press, Oxford, 2021. pp. 1003–1021.

⁴⁴ Washington, W. – Taylor, B. – Kopnina, H. N. – Cryer, P. – Piccolo, J. J.: *Why ecocentrism is the key pathway to sustainability*. Ecological Citizen, Vol. 1. No. 1, 2021, p. 35.

It is worth remembering, however, that the ecocentric approach is one of the most ancient environmental and sustainability theories, as it is how Indigenous⁴⁵ communities have always viewed the environment around them and their role in the natural order.⁴⁶ With regard to ecocide, Indigenous peoples are particularly concerned, especially in light of the growing literature pointing to the close link between genocide and ecocide (*ecocide-genocide nexus*). The environment is a complex system, and the regulatory instruments adopted must respond to this specificity. Man-centred instruments alone cannot successfully combat the environmental degradation of our time, the decline of nature, and we must learn from the ecological laws that modern scientific research has made it possible to understand:

“Ecology teaches humility in another way, because from it we recognize that we do not know everything about the world’s ecosystems, and never will.”⁴⁷

⁴⁵ Note of the author: Indigenous is capitalised as a mark of respect in the context of this book.

⁴⁶ See McIntyre-Mills, J.J. – Makaulule, M. – Lethole, P. *et al.*: *Ecocentric Living: A Way Forward Towards Zero Carbon: A Conversation about Indigenous Law and Leadership Based on Custodianship and Praxis*. Systemic Practice and Action Research, Vol. 36, 2023, pp. 275–319. DOI: <https://doi.org/10.1007/s11213-022-09604-0>.

⁴⁷ Washington et al. (2021): p. 39.

CHAPTER 2.

COMPLEXITY AND INTERRELATEDNESS IN ENVIRONMENTAL LAW WITH A SPECIAL FOCUS ON BIODIVERSITY CONSERVATION

*“Living wild species are like a library of books still unread.
Our heedless destruction of them is akin to burning the library
without ever having read its books.”⁴⁸*

Understanding the roots and sources of International Environmental Law (IEL) is a necessary step in evaluating how ecocide, as a new concept, could help preserve biodiversity and fight climate change. This chapter aims to highlight the cornerstones of the history of IEL, the leading international conventions on wildlife and biodiversity protection, and the tendencies of relevant regulations. In recent decades, IEL has become a complex framework, and the different segments of regulation necessarily affect how these instruments are able to achieve the stated goals. The interrelatedness of environmental regulation has gained growing attention in practice and literature. Due to the scope of ecocide, as an overlapping legislative term appearing in different branches of legislation – criminal law, environmental law, human rights – it is crucial to analyse whether ecocide can serve as a valuable tool for biodiversity conservation and wildlife protection. Some aspects of this topic, for example the correlation between transnational environmental crime and ecocide, are detailed in the upcoming chapters due to the specific character of the issues.

⁴⁸ Dingell, John: *Balancing on the Brink of Extinction: The Endangered Species Act and Lessons for the Future*. Island Press, 1990.

2.1. The birth of International Environmental Law and the beginning of environmental protection

International Environmental Law is a newer regulatory aspect of public international law, since its modern history started in the first half of the 20th century and strongly relates to the establishment of intergovernmental organisations, such as the United Nations. The entities of the UN family and the UN itself played a significant role in the development of environmental standards and provided a viable framework for discussion. Due to the fact that the UN was established in 1945, some authors count the “birth” of IEL only from the creation of the organisation. However, this view seems to be inaccurate, since several important international conventions were signed in the first half of the 20th century, and the states realised that global cooperation was needed to fight the adverse environmental consequences of the Great Industrial Revolution.⁴⁹ This is the first part of the IEL’s history, labelled as the ‘era of recognition’. Among the milestone international conventions, the Paris Treaty has to be mentioned on the protection of birds useful to agriculture, an international treaty that, in a renewed form, is still in force.⁵⁰ The practical impact of the instrument is limited, although it served as a “stepping stone” towards more advanced international treaties.⁵¹ In 1911, the United States of America and Great Britain signed the North Pacific Fur Seal Convention. It was also interesting that the colonial powers initiated the first international convention that aimed to preserve wildlife in Africa. The London Convention of 1900⁵² was signed by France, Germany, Great Britain, Italy, Spain and the Free State of Congo, but the majority of states failed to ratify the Convention, and it did not enter into force. The London Convention was explicitly aimed at the conservation of wildlife on the African continent: to prevent the uncontrolled massacre of wild animals and ensure the conservation of diverse wild animal species.⁵³ The treaty

⁴⁹ On the history of International Environmental Law See: Sands, Philippe: *Principles of International Environmental Law*. Third Edition, Cambridge University Press, Cambridge, 2012, pp. 22–49.

⁵⁰ Convention for the Protection of Birds Useful to Agriculture 1902 In later form: International Convention for the Protection of Birds, Paris, 1950. UNTS Vol. 638. p. 185. Based on Article 1, the aim of the Convention is much broader than the first version of the international treaty, to “*protect birds in the wild state*”.

⁵¹ Bowman, Michael J.: *The 1902 Convention for the Protection of Birds in Historical and Juridical Perspective* A. Ardeola, Vol. 61. No. 1. June 2014. pp. 171–196. DOI: <http://dx.doi.org/10.13157/arla.61.1.2014.171>.

⁵² Convention for the Preservation of Wild Animals, Birds and Fish in Africa

⁵³ Based on the Preamble of the London Convention.

also established a selective mechanism for the protection of useful, endangered or rare species and encouraged the State Parties to establish “reserves”.⁵⁴ After the failure of the first attempt to accept norms concerning wildlife protection in Africa, negotiation was started, and following the Paris Conference of 1931, the older instrument was replaced in 1933 by the Convention Relative to the Preservation of Fauna and Flora in their Natural State. The ‘new’ London Convention entered into force in 1936. The scope of the London Convention now included plant species as well, not just animals. However, it is important to note that the main aim of the instrument was to preserve economically valuable species, including those popular with “trophy hunters”.⁵⁵ As can clearly be seen from this, the early instruments of environmental protection were strictly anthropocentric, centralising the ‘needs and aspirations’ of humanity.

One of the most significant environmental cases of this period, the *Trail Smelter case*, was decided by arbitration on 11 March 1941.⁵⁶ The Trail Smelter, located in British Columbia, has been operated by a Canadian company since 1906. The sulphur dioxide produced by the Trail Smelter’s operations polluted Washington State, highlighting that pollution does not stay within the immediate sphere of operation. The pollution became particularly significant after 1906. It was mainly US farmers who suffered from adverse consequences of this industrial activity. The 1941 arbitration award had already been preceded by a joint commission, which awarded damages and made recommendations to reduce pollution. The Trail Smelter case is significant not only because it was the first substantial example in a series of international environmental court cases but also because it reinforced the principle of “*sic utere tuo*”. The principle of “*sic utere tuo ut alienum non-laedas*: use your own without harming others” means that states cannot cause trans-boundary environmental damage. Based on this principle, States must apply a method for the exploitation and use of natural resources on their territory in a way that does not cause environmental damage to neighbouring or other states.

⁵⁴ Article II. (5).

⁵⁵ On the protection of African wildlife, see the following publication. IUCN Environmental Law Programme: *An Introduction to the African Convention on the Conservation of Nature and Natural Resources*. IUCN Environmental Policy and Law Paper No. 56. 2004. p. 73. Available at: <https://portals.iucn.org/library/sites/library/files/documents/EPLP-056.pdf>.

⁵⁶ Trail Smelter Case (United States v Canada) Report of International Arbitral Awards, 1938-1941, vol. III. 1905-1982.

2.1.1. Environmental conferences organised within the framework of the United Nations

The establishment of the United Nations was a turning point in the environmental discourse of the international community, as the organisation provided a platform for conversation and, later, an institutionalised framework for the acceptance of new programmes targeting environmental issues. In the history of environmental legislation, the conferences organised with the support of the UN are still remembered as crucial moments for environmentalism. The world conferences provided an opportunity to deepen the intergovernmental discourse. On the other hand, they enabled the discussion of environmental issues in an institutionalised form by bodies and organisations dealing specifically with sustainable development and environmental protection. A series of international organisations were established during the second part of the development of IEL, a timeframe usually declared from 1945 (the establishment of the UN) till 1972 (the first UN environmental conference). Among the significant organisations, the IUCN⁵⁷ was founded in 1948. The IUCN is a unique organisation between the governmental and non-governmental sectors, the first to be set up for the conservation of nature. Its activities have given it global importance, including the creation of a 'red list' of endangered species.

In the European sphere, as part of the political root of European integration, the Council of Europe (CoE) was established with the primary aim of protecting European values, including human rights and the rule of law. However, in the last decades, the CoE has also played an essential role in regional environmental regulation through the acceptance of international treaties. The regulated questions included nature protection and water affairs.

In 1972, members of the international community gathered together to discuss pressing environmental issues. The United Nations Conference on the Human Environment was organised in Stockholm.⁵⁸ In relation to the history of ecocide, the Stockholm Conference is of particular interest, as on this occasion there was one of the earliest specific references to ecocide, with Olof Palme, the Prime Minister of Sweden at the time, referring to the USA's Vietnam War Effort as ecocide.⁵⁹ As a result of the Stockholm Conference, the final document, the so-called Stockholm Declaration, was adopted. The Declaration contained 26 principles, many

⁵⁷ International Union for Conservation of Nature.

⁵⁸ 5-16 June 1972.

⁵⁹ The significance of the Stockholm Conference and detailed analyses are in the relevant Chapter of this book.

of which later gained legal importance. One of the main achievements of the Stockholm Conference was the creation of the United Nations Environment Programme (UNEP). Others followed the first Conference, and in 1992, the Earth Summit (Conference on Environment and Development)⁶⁰ was held in Rio de Janeiro. The Conference established the link between environment and development, placing sustainable development at the centre. The Rio Declaration of 27 principles covers all aspects of environmental protection and relies heavily on the previous soft law document accepted in Stockholm. At this landmark Conference, several instruments were adopted: the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity. Agenda 21 is a comprehensive action plan that sets the course for the 21st century. It was reaffirmed at the Johannesburg Conference of 2002. After the Rio Conference, the main question was how effective enforcement mechanisms could be established to guarantee the implementation of environmental standards. Since 1992, UN programmes have largely focused on sustainable development. Only ten years after the Rio Conference, the World Summit on Sustainable Development took place in Johannesburg in autumn 2002 and opened the era of integration of environmental standards. From 20–22 June 2012, states returned to Rio de Janeiro for another conference on sustainable development (The United Nations Conference on Sustainable Development or Rio+20), which launched the Sustainable Development Goals (SDGs) and a series of policy documents for green economic development. As we can see, within the frames of the United Nations, the environmental conferences provided the place and opportunity for the growing number of member states to discuss global environmental problems and to accept a set of binding and non-binding instruments to fight the most pressing issues including biodiversity loss and climate change.

2.1.2. The definition of International Environmental Law and its main sources

International environmental law is a field within international public law. Some legislative areas of international law have a long history, going back to ancient times, such as norms concerning diplomatic and consular relations, the law of the sea and some aspects of statehood. Environmental

⁶⁰ 3–4 June 1992.

law is one of the youngest areas of international law; however, in domestic legislation, environmental and nature protection appeared much earlier.⁶¹

As a result of inter-state cooperation, international environmental law has come to regulate global environmental issues that are of major concern to all states and all regions. International environmental law rules either protect key natural/environmental values (e.g. world heritage protection, biodiversity protection, classical nature conservation) or support the fight against global environmental problems (e.g. climate change, global warming, air pollution).⁶²

In order for public international law to include specific environmental considerations in its scope, at least two states must agree that it is not sufficient to regulate the issue in domestic law. In the field of IEL, there are a number of areas of regulation where almost the entire international community has agreed on the need for a global framework. In practice, this consensus means that, mainly through the conclusion of international treaties, states have defined certain common minimum requirements. The commitments made in the field of international law must be honoured on the basis of the principle of *pacta sunt servanda*. However, one may ask why states should undertake international obligations and why domestic regulation of certain environmental issues is not sufficient. There are several arguments supporting the need for international regulation.

First, pollution knows no borders, since it is trans-boundary in nature. In many cases, pollution in the territory of a state results in severe environmental damage in another country. The recognition of trans-boundary environmental pollution has prompted the adoption of international legislation on the matter, the forerunner of which has already appeared in customary law.⁶³ Secondly, it is ineffective for a state to set high environmental standards in its domestic law if pollution from neighbouring countries prevents the effective enforcement of such regulations. It is enough to emphasise the importance of cross-border or shared environmental resources that require joint action and the development of common rules to preserve lakes, rivers, forests and other

⁶¹ Farkas Csamangó, Erika: *Magyar környezetjogi szabályozások és kihívások* [Hungarian environmental legislations and challenges]. Iurisperitus Publishing, Szeged, 2023, pp. 46–48.

⁶² Authors own definition.

⁶³ Mendis, Chinthaka: *Sovereignty vs. trans-boundary environmental harm: The evolving international law obligations and the Sethusamudram Ship Channel Project*. United Nations, 2006. Available at: https://www.un.org/depts/los/nippon/unff_programme_home/fellows_pages/fellows_papers/mendis_0607_sri_lanka.pdf.

natural scenery of international importance. Finally, global environmental problems are not the result of pollution by a single state but of the international community as a whole, with all members contributing to the current situation. It is, therefore, the responsibility of each stakeholder to play its part in implementing the commitments it has accepted to preserve the environment and reverse negative changes. The principle of common but differentiated responsibilities arises in this context.⁶⁴ According to this principle, since states have contributed to environmental problems to different degrees, they bear different burdens in undertaking the obligations set out to reverse them, particularly in view of the unique situation and needs of developing states.

At the heart of international environmental law are the customary international law principles and international agreements adopted by states. Environmental law has specific features as regulations that appear in the overlapping of different objectives and the paramount importance of the decisions of treaty bodies.⁶⁵ The specific characteristics of legislation in the field of international environmental law are the “*constitution*” of international treaty regimes and the fragmentation of the organisation.⁶⁶ The essence of international environmental law can thus be captured in the recognition that global environmental problems require global solutions. The international community is seeking to establish common standards through extensive treaty-making to reverse the negative impacts we are currently experiencing.

The catalogue of legal sources in internal legal systems is relatively easy to identify, and legislative orders can be learned from relevant legislation and constitutional norms. In contrast, international law has its specific features, including its unique system of sources of law. International law is decentralised in nature so that neither law-making nor enforcement, nor sanctioning and justice can be tied to a single institution. According to the positivist conception of international law theory, it is the will of the state that establishes a norm of international law. Therefore, only international treaties and state practice were accepted as a source of law. Positivist theory was a typical view of the 19th century. However, the

⁶⁴ Epstein, Charlotte: *Common but differentiated responsibilities (CBDR)*. Britannica. Available at: <https://www.britannica.com/topic/common-but-differentiated-responsibilities>.

⁶⁵ van Asselt, Harro: *Managing the Fragmentation of International Environmental Law: Forests at the Intersection of the Climate and Biodiversity Regimes*. New York University Journal of International Law and Politics, Vol. 44. No. 4. 2011, pp. 1205–1278.

⁶⁶ Bodansky, Daniel – Bunneé, Jutta – Hey, Ellen: *The Oxford Handbook of International Environmental Law*. Oxford University Press, 2007. pp. 473–476.

universalist theory now also takes account of specific global interests of the international community, under which states are subject to rules to which they have not necessarily contributed. Among the global interests that justify the universalist theory is the protection of the environment, which explicitly requires action by the international community.⁶⁷ In public international law, there is no hierarchy of sources of law in a classical sense and as a result, international treaties and customary law can be considered as equivalent sources of law. The lack of hierarchy is broken only by *ius cogens norms*⁶⁸ which must be respected by all States and can be changed only by rules of international law which are accepted as such: “[...] a *peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character*”.⁶⁹ There is also a growing debate concerning the right to a healthy environment, whether it can be considered as *ius cogens* norm based on its embeddedness in national constitutions and international legal instruments.⁷⁰

The catalogue of sources of IEL corresponds with the generally accepted sources of public international law.⁷¹ However, in IEL, the sources of law have different emphases and significance in comparison to other legislative areas of public international law. Firstly, the principles

⁶⁷ Kende, Tamás – Nagy, Boldizsár – Sonnevend, Pál – Valki, László (Eds.): *Nemzetközi jog* [International law]. Wolters Kluwer Hungary, Second edition, Budapest, 2018, p. 145.

⁶⁸ *Ius cogens* norms are peremptory norms of general international law and based on the Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law of the International Law Commission, the non-exhaustive list of these norms is the following: the prohibition of aggression; the prohibition of genocide; the prohibition of crimes against humanity; the basic rules of international humanitarian law; the prohibition of racial discrimination and apartheid; the prohibition of slavery; the prohibition of torture; the right of self-determination.

⁶⁹ Vienna Convention on the Law of Treaties 1969 (1980) UNTS Vol. 1155. p. 331. Article 53.

⁷⁰ See Kotzé, Louis J.: In Search of a Right to a Healthy Environment in International Law *Ius Cogens* Norms. In: Knox, John H. – Pejan, Ramin (Eds.): *The Human Right to a Healthy Environment*. Cambridge: Cambridge University Press, 2018. pp. 136–154. DOI: <https://doi.org/10.1017/9781108367530>.

⁷¹ In general, Article 38 of the Statute of the International Court of Justice is referred to as the list of sources of public international law. These sources are international conventions, whether general or particular, establishing rules expressly recognised by the contesting states, international custom, as evidence of a general practice accepted as law, and the general principles of law recognised by civilised nations. Furthermore, the judicial decisions and the teachings of the most highly qualified publicists of the various nations are subsidiary means for the determination of rules of law.

of customary law, and thus of international environmental law, are of particular importance since, for a long time, there were no generally accepted international treaties as a basis of reasoning. These principles have often appeared in soft law documents, such as the outcomes of environmental conferences and court decisions. As a result, non-binding instruments, programmes and documents are of particular importance. The states' practices continuously reinforced some of the principles contained in the soft law sources, and several of these principles later became international customs. In the first half of the twentieth century, the acceptance of binding international instruments, both at regional and universal levels, came to the fore. Nowadays, Multilateral Environmental Agreements (MEA) are at the heart of IEL concerning horizontal and sectoral environmental aspects as well. Some of the sources have specific characteristics in IEL, such as international treaties.

A framework convention is an international treaty that aims to regulate the main features of a particular issue, providing a baseline regulation concerning the scope of cooperation, institutional and financial aspects and a call for further discussion.⁷² However, framework conventions tend to leave the declaration of enforceable obligations for additional legislation, which often appears in a protocol. Although protocols are accepted to complement framework conventions, in legal terms, they are international treaties that have to be signed and ratified by the parties to enter into force. This is the reason why the states tend to sign the framework conventions easily and are hesitant to join the protocols that contain enforceable international obligations towards the parties to the convention. The challenge of treaty-making in the area of IEL is often the lack of scientific consensus among states on environmental issues. To this day, the lack of a common position makes it difficult to formulate precise commitments. Framework conventions as a regulatory technique have made it possible to involve as many states as possible in the treaty negotiation process and to spur the members of the international community to ratify these instruments. However, the specific environmental commitments do not arise from the framework convention but from the protocols supplementing it. Nevertheless, the adoption of the framework conventions can be seen as a success in terms of creating a discourse in the international community on a particular nature or environmental issue. International environmental treaties, and thus framework conventions, are characterised by the adoption of annexes and lists. Thus, the legal and

⁷² Kovács, Péter: *Nemzetközi közjog* [Public International Law]. Osiris Publishing, Budapest, 2011, pp. 86–88.

non-legal content is separated. Non-legal content is technical or scientific content, such as a list of species protected under the convention. This solution also allows the annexes and lists to be amended at the Conferences of the Parties (CoP) without changing the main text of the convention and the legal content.⁷³

In the history of ecocide, we will see that an attempt to accept a specific international convention on ecocide was made in the 1970s, but this effort only resulted in the publication of a draft treaty in the literature. Some supporters of ecocide are lobbying for the negotiation of an ecocide convention, but realistically, it is not foreseeable that the international community would accept and ratify such an instrument.

International soft law is of unique importance to IEL. Firstly, the umbrella term of *soft law* refers to non-binding instruments in international law. Secondly, *soft law* can also mean “*less binding*” rules where the precise content of what would otherwise be law has not yet been established, where there is a doubt to whom it should be applied, or even where both criteria are combined.⁷⁴ Soft law is what László Buza calls “*programmatic norms*”, which will, in time, become full legal norms, but the legislation is still in its initial stages, and the concrete rules will be built on the “*skeleton*” later.⁷⁵

The term *soft law* is also used in international environmental and economic law to refer to the non-legally binding decisions of international organisations. In the case of resolutions, there is already a common legislative intent on behalf of the states, but there is no agreement concerning the precise content and wording of the law. However, the commonly agreed principles do bind the adopting states in fact and political terms. Of course, the documents thus adopted are not legally enforceable.⁷⁶ The adoption of a wide range of non-binding documents has become one of the most commonly used elements of intergovernmental cooperation on environmental issues. In the framework of a number of international organisations and across almost the whole range of environmental issues, states are accepting *soft law* instruments. Not only is the number of non-binding instruments increasing, but also their role and functions. Non-binding instruments can no longer be seen as a

⁷³ Kende, Tamás – Nagy, Boldizsár – Sonnevend, Pál – Valki, László: *Nemzetközi jog*. Complex Publishing, Budapest, 2014, pp. 419–422.

⁷⁴ Nagy, Károly: *Nemzetköz. jog* [International law]. Püski, Budapest, 1999. p. 50.

⁷⁵ Buza, László: *A törvényesség és az igazságosság elve a nemzetközi jogban* [The principles of legality and justice in international law]. Acta Universitatis Szegediensis: acta juridica et politica. Vol. 3. No. 1. 1957. pp. 1–55.

⁷⁶ Nagy (1999): p. 50.

precursor to international treaty-making or customary law. Moreover, their content goes far beyond the declaration of general principles of intergovernmental cooperation. *Soft law* can appear in a variety of forms, such as resolutions, declarations, directives, guidelines, action plans, which set out specific measures and practices to be followed, both by states and by civil society.⁷⁷ Furthermore, as some of the *soft law* instruments are laid down in the framework of international organisations, they establish a number of mechanisms for monitoring and controlling the implementation of action plans that are otherwise adopted in non-binding form. This makes it practically irrelevant that a given resource was otherwise adopted as soft law.⁷⁸ The non-binding documents can appear under different names. As in the case of international treaties, the name of the source refers to its content, but in the case of *soft law* the title of the document is less predictable, because different international organisations use various names for documents and similar content may appear in sources with different names. International programmes or action plans are intended to define future actions of international organisations and states. Action plans often also establish a set of recommendations. Of particular importance in international environmental law are programmes or plans of action adopted at international conferences, which also set out general principles. The 1972 Stockholm Declaration and the 1992 Rio Declaration fall into this category. The adoption of recommendations by the decision-making bodies of international organisations is particularly important in the field of the environment and sustainable development. Last but not least, technical regulations and standards for the various production processes and products also lay down important requirements, not only for the product itself, but also for transport, packaging and labelling. Such technical standards have been drawn up, for example, in the WTO framework.⁷⁹

⁷⁷ The meaning and interpretation of soft law also can raise serious debate and uncertainty. For details, see Blutman, László: In the Trap of a Legal Metaphor: International Soft Law. *International and Comparative Law Quarterly*, Vol. 59. July 2010, pp. 605-624.

⁷⁸ Friedrich, Jürgen: *International Environmental „soft law“ The Functions and Limits of Nonbinding Instruments in International Environmental Governance and Law*. Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht. Springer, Berlin, Heidelberg, 2013. DOI: <https://doi.org/10.1007/978-3-642-44946-8>. pp. 1-8.

⁷⁹ Friedrich (2013): pp. 15-60.

2.2. The means of biodiversity conservation in International Environmental Law

Sectoral environmental regulation is a set of rules adopted to protect specific environmental or natural elements. In many cases, general international treaties adopted in the broader context also include environmental dimensions, such as in the case of the protection of the marine environment. Furthermore, the range of conventions negotiated and adopted in the regional arena is of utmost importance, as it was already highlighted in the case of the European sphere and the Council of Europe. In the field of international treaty-making, especially at the regional level, a number of conventions have been adopted in the field of nature conservation. We have already seen that in the first decades of the 1900s, a number of bilateral treaties were signed in the field of nature conservation. However, bilateral conventions have been virtually neglected and resulted in little practical use. As I will point out in the context of biodiversity conservation, effective regulation requires a broad range of collaboration between states, and natural areas are often located in the territories of several states, requiring their cooperation for effective regulation.

Biodiversity conservation is one of the most important aims of environmental protection. Not just in the international sphere, but also on the regional level, legally binding and non-binding instruments were adopted to preserve natural areas, species and the diversity of species. Biodiversity as a term was derived from the root word “*diversity*” as modified by the prefix “*bio*” and can be explained in a number of ways, since there is no consistent meaning to explain it, especially in relation to natural resources.⁸⁰ Firstly, it means the diversity or abundance of species, populations or genes. Furthermore, biodiversity can be explained by uniformity, richness or relative frequency of species by the spatial and temporal patterns observed.⁸¹ Various authors choose to highlight different aspects of biodiversity, such as the “*the number of different species occurring in some location*”⁸² or “*the variety of life and its processes. It includes the variety of living organisms, the genetic differences among them, the communities and ecosystems in which they occur, and the ecological and evolutionary processes*

⁸⁰ DeLong, Don C. Jr.: *Defining biodiversity*. Wildlife Society Bulletin, Vol. 24. No. 4. 1996, p. 740.

⁸¹ Ibid.

⁸² Knopf, F. L.: *Focusing conservation of a diverse wildlife resource*. Wildlife Management Institute, Washington, 1992. p. 242.

*that keep them functioning, yet ever changing and adapting*⁸³. Species diversity is of the greatest importance in international law and is at the heart of most international conventions. At the same time, the various resources adopted for the conservation of biodiversity can be classified according to the nature of the protection.⁸⁴

The simplest international treaties of biodiversity protection concentrated only on one species. This form of regulation includes the earliest treaties concluded in international law at the beginning of the 20th century, both at regional and universal levels. The first form of international treaties includes the 1973 Convention on the Conservation of Polar Bears⁸⁵ and most of the conventions of the early period of international environmental law. The second category is where the regulation is aimed at the conservation of a natural site of high priority, together with the protection of the species living there. There are several examples of the second type of regulation: the Ramsar Convention⁸⁶ on the protection of internationally important wild waters, adopted in 1971, the Bonn Convention⁸⁷ on the protection of migratory species of wild animals (1979), the Convention on the protection of the Amazon (1975)⁸⁸, the Treaty on the protection of the Central American territory (1992)⁸⁹, and the Kiev Convention on the sustainable development of the Carpathians (2003)⁹⁰. The two forms of regulation have advantages and disadvantages, but it can be stated that the latter requires the willingness of states to compromise in order to adopt complex provisions. Thirdly, international conventions that put biodiversity the subject of regulation must be mentioned. One example is the Convention on Biological Diversity, adopted in 1992. These conventions implement the so-called ecosystem approach. According to this approach, as ecosystems are complex systems,

⁸³ Noos, Reed F. – Cooperrider, Allen: *Saving Nature's Legacy: Protecting And Restoring Biodiversity*. Island Press, Washington, 1994. p. 5.

⁸⁴ Based on the author's own classification system.

⁸⁵ Agreement on the conservation of Polar Bears. 1973 (1976), Oslo UNTS Vol. 2898, p. 243.

⁸⁶ Convention on Wetlands of international importance especially as waterfowl habitat (Ramsar Convention). Convention on Wetlands of international importance especially as waterfowl habitat, adopted at Ramsar, 2 February 1971, and its Additional Protocols: 1982, 1987. 1971. (1975.)

⁸⁷ The Convention on Migratory Species of Wild Animals. 1979 (1983) Bonn.

⁸⁸ Agreement for the conservation of the flora and fauna of the Amazonian territories. 1975 (1976) Lima UNTS Vol. 1056, p. 127.

⁸⁹ Convention for the Conservation of the Biodiversity and the Protection of Priority Wilderness Areas in Central America 1992 (1994) Managua.

⁹⁰ The Carpathian Convention. 2003 (2006) Kiev.

the instruments that provide protection must also implement regulations that take account of ecological boundaries.⁹¹ Finally, we must distinguish between international conventions that do not explicitly protect biodiversity but contain rules that indirectly serve the aim of biodiversity conservation. From a systematic point of view, CITES falls into the latter category.⁹²

There is a theoretical difference between nature conservation and environmental protection. Nature conservation means the preservation of the values and resources of nature. Meanwhile, environmental protection aims to protect the natural or artificial (modified or created by man) environment from the adverse effects caused by human conduct.⁹³ The concept implies that nature conservation concentrates only on the protection of the natural environment and its components that have not been modified or altered by man. While environmental protection also includes the protection of the man-made environment, it is linked to the protection of cultural heritage. Nature conservation is one of the main objectives of international legislation, and a number of documents and treaties have been adopted on this issue. The first international document that positioned environmental conservation efforts at the centre was accepted in 1980 by the IUCN in cooperation with the UNEP, the WWF, the FAO, and UNESCO. The strategy applies basic concepts such as sustainability and biodiversity. It was also an important stimulus for the Our Common Future Report, accepted by the Gro Harlem Brundtland-led World Commission. The main objectives of the strategy are to understand genetic and ecological diversity and to ensure the sustainable use of natural resources and sustainable development.⁹⁴ The strategy also relied on the recognition that living resource conservation contributes to human survival and sustainable development.⁹⁵

In 1982, the United Nations General Assembly adopted the “*World Charter for Nature*”.⁹⁶ The World Charter sets out fundamental principles such as the sustainable exploitation of natural resources and the general

⁹¹ The Ecosystem Approach. The Secretariat of the Convention on Biological Diversity, Montreal 2004. Available at: <https://www.cbd.int/doc/publications/ea-text-en.pdf>.

⁹² Convention on International Trade in Endangered Species of Wild Fauna and Flora. Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973 (1975).

⁹³ Bándi, Gyula: *Környezetjog* [Environmental Law]. Szent István Association, Budapest, 2014. pp. 11-24.

⁹⁴ IUCN: *World Conservation Strategy; Living Resource Conservation for Sustainable Development*. 1980. Available at: <https://portals.iucn.org/library/efiles/documents/WCS-004.pdf>.

⁹⁵ World Conservation Strategy, p. IV.

⁹⁶ UNGA: A/RES/37/7 28 October 1982.

obligation to protect nature, even in times of emergency or armed conflicts. The resolution clearly states that there is an inextricable link between man and nature and that the preservation of the natural environment is a fundamental condition for humanity's existence. Furthermore, the whole Earth, including aquatic and terrestrial habitats, is subject to the principles of nature conservation and habitats of unique value must be given special protection.⁹⁷ At the Rio Conference in 1992, the participants originally wanted to adopt a treaty concerning forestry but could not reach the required consensus. As a result, the achievement in this regard was the acceptance of a declaration about forests.⁹⁸ The declaration, also known as the Rio Forest Principles, is a non-legally binding document that addresses conservation and sustainable forest management principles for all forests.

Biodiversity loss has human-induced and natural causes: "*Biodiversity loss describes the decline in the number, genetic variability, and variety of species, and the biological communities in a given area*". There are natural phenomena leading to species extinction and biodiversity loss, including wildfires, volcanic eruptions, natural changes in ecosystem and floods. The human-induced causes are climate change, the overexploitation of species, habitat loss, habitat degradation, invasive species, and pollution. It is interesting to question whether the concept of ecocide can serve as an effective tool to combat biodiversity loss and species extinction. As I already emphasised in relation to wildlife crime, due to the nature of ecocide and the holistic approach it requires, ecocide, in general, can serve the purpose of nature conservation. However, it is also important to note that there are different legislative approaches concerning nature conservation, such as holistic and ecocentric approaches to international environmental regulation.

⁹⁷ A/RES/37/7 Preamble and aims.

⁹⁸ Earth Summit, 1992: Rio Declaration and forest principles [ST/DPI/1299. Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests.

2.3. Interrelatedness in International Environmental Law and the changes in regulatory thinking, from anthropocentric to holistic and ecocentric approaches

The perception of ecological issues greatly influences International Environmental Law. Many blame the failure and shortcomings of environmental regulations on the human-centred (anthropocentric) approach. Anthropocentrism is a vague and often misused term, “*meaning literally just human-centeredness, in common usage it refers to human-centered values as opposed to values found in other beings*”.⁹⁹ In recent decades, a lot has changed in environmental conservation, and there is an intense debate about the rights of animals, natural elements and the different branches of eco-ethics. Some researchers defend the anthropocentric view and try to provide an explanation of why the human-centred approach is still acceptable. These researchers are trying to “*rehabilitate*” anthropocentrism. Meanwhile, others believe that human-centredness is a “*significant driver of ecocide and the environmental crisis, for society has been madly pursuing project ‘human planet’ without considering that humanity is (in the end) fully dependent on nature*”.¹⁰⁰ Based on the work of Hayward, it is counter-productive to blame anthropocentrism and the writer even recommends not using the word in relation to environmental conservation. Hayward objects to “*human chauvinism and speciesism*” and differentiates between legitimate and illegitimate human interests.¹⁰¹ The author also highlights that not all humanity follows anthropocentrism, particularly indigenous communities, which traditionally follow different values, and only the so-called ‘Western’ nations are human-centred. Furthermore, anthropocentric motivation can be seen as favourable, as “*ecosystems constitute the ‘life-support system’ for humans*” and “*self-love, properly understood, can be considered a precondition of loving others*”.¹⁰² It is true that for a long time, the human-centred approach dominated environmental regulation,

⁹⁹ Kopnina, Helen – Washington, Haydn – Taylor, Bron – Piccolo, John J: *Anthropocentrism: More than Just a Misunderstood Problem*. Journal of Agricultural and Environmental Ethics, Vol. 31. 2018, p. 113. DOI: <https://doi.org/10.1007/s10806-018-9711-1>.

¹⁰⁰ Kopnina et al (2018): p. 123.

¹⁰¹ Hayward, T.: *Anthropocentrism: A misunderstood problem*. Environmental Values, Vol. 6. No. 1, 1997, pp. 49–63.

¹⁰² Hayward (1997): p. 60. and p. 52.

and it also appeared in the milestone documents, including the World Charter for Nature of the UN General Assembly.¹⁰³

Despite the extremely negative consequences of environmental degradation, the means of redress are limited.¹⁰⁴ As has already been mentioned, most of the forums where liability can be established strongly relate to the anthropocentric approach, including human rights courts and the International Criminal Court. However, there is a change in ethical thinking; more and more researchers are establishing new strategies and ideas that are highly influenced by the holistic thinking of indigenous communities. Eco-ethics, an ecocentric approach and Earth jurisprudence have long been debated in environmental philosophy and human ecology. Eco-centrism and its legal adaption have been explored by writers such as *Christopher Stone*¹⁰⁵, *Roderick Nash*¹⁰⁶, and *Klaus Bosselmann*¹⁰⁷. *John Muir*¹⁰⁸ is a founder of the modern conservation movement. *Muir* was one of the first conservationists who shared the idea that humans are part of nature and wild places are not just resources to be exploited.

There is one common characteristic of these new ideas of environmentalism: the detachment from human-centred views where the environment is seen as the 'server' of humanity with the pure aim to fulfil the need of human needs. These new ideas also strongly correlate with the "Rights of Nature" concept, where "[...] everything has a right to be recognized and revered. Trees have tree rights, insects have insect rights, rivers have river rights, and mountains have mountain rights."¹⁰⁹ Environmental destruction is often seen as a victimless crime, and the adverse changes do not always appear immediately; the harm can be diffused or go undetected for a long time.¹¹⁰ The ecocentric paradigm has to be translated into enforceable legislation, meaning that the environment has to be

¹⁰³ Kopnina et al (2018): p. 112.

¹⁰⁴ Maloney, Michelle: *Finally Being Heard: The Great Barrier Reef and the International Rights of Nature Tribunal*. Griffith Journal of Law and Human Dignity, Vol. 3. No. 1. 2015, pp. 41–55.

¹⁰⁵ Stone, Christopher: *Should Trees Have Standing? Law, Morality and the Environment*. Southern California Law Review, Vol. 45. pp. 450–501.

¹⁰⁶ Nash, Roderick Frazier: *The Rights of Nature: A History of Environmental Ethics*. University of Wisconsin Press, 1989.

¹⁰⁷ Bosselmann, Klaus: *Governing the Global Commons the 'planetary boundaries' approach*. Policy Quarterly, Vol. 13. No. 1. 2017, pp. 37–42. DOI: 10.26686/pq.v13i1.4648.

¹⁰⁸ 1838–1914, conservationist, activist, writer, explorer, campaigner for wild places.

¹⁰⁹ Berry, Thomas: *The Great Work: Our Way Into the Future*. Harmony, 1999. p. 5.

¹¹⁰ Skinnider, Eileen: *Victims of Environmental Crime – Mapping the Issues*. The International Centre for Criminal Law Reform and Criminal Justice Policy, March 2011. p. 2. Available at: <https://globalinitiative.net/wp-content/uploads/2017/12/ICCLR-Victims-of-Environmental-Crime.pdf>.

acknowledged as a “*potential rightsholder*”. From the point of view of ecocide, the criminalisation of environmental destruction means that finally, nature can be seen as “*an equal partner with humans*” and not as property.¹¹¹ Severe environmental destruction also results in human rights violations, as well as social and humanitarian crises. Overall, the designation of ecocide contributes to a more peaceful civilisation.¹¹² The term “*Earth jurisprudence*” was coined by *Thomas Berry*.¹¹³ Advocates of Earth-centred law and governance argue that the primary cause of ecological crises is the anthropocentric view, which is based on the belief that nature is just a collection of objects for human use. The supporters of Earth jurisprudence recommend a radical change in how humanity sees nature and our place in the world. The change means that we see nature not as an object but as the subject of legal rights, and the criminalisation of environmental destruction breaks the ongoing view that green crimes are victimless.

Some authors label International Environmental Law a “*complex adaptive system*,” a “*special kind of self-organising system with emergent properties and adaptive capacity in response to changing external conditions*.”¹¹⁴ This argumentation relies on the acknowledgement of the complexity of the Earth system that influences the evolution of environmental legislation. Ecosystems are complex systems, so the regulations aiming to preserve Earth’s environment necessarily have to be of the same character.

Understanding complexity is crucial for effective environmental legislation. There is a difference between a complicated and a complex issue. Complicated problems can be solved through “*conventional scientific approaches*.” Meanwhile, complex problems require a greater understanding. “*that can accommodate non-linear and collective patterns of behaviour*.”¹¹⁵ Complex thinking greatly influenced the natural sciences, especially mathematics and physics. And in the 20th century, it found its way into the social sciences. Some problems are “*resistant to resolution*”, meaning that several different solutions can be identified for one issue, so there are

¹¹¹ Wijdekop, Feme: *Against Ecocide: Legal Protection for Earth*. Green Transition Initiative, August 2016. p. 2. Available at: https://www.greattransition.org/images/GTI_publications/Against-Ecocide.pdf.

¹¹² Ibid.

¹¹³ Berry (1999).

¹¹⁴ Kim, Rakhyn E. – Mackey, Brendan: International environmental law as a complex adaptive system. *International Environmental Agreements*, 2014, Vol. 14. pp. 5–24. DOI: <https://doi.org/10.1007/s10784-013-9225-2>.

¹¹⁵ Brunnée, Jutta: The Rule of International (Environmental) Law and Complex Problems. In: Krieger, Heike – Nolte, Georg – Zimmermann, Andreas (Eds): *The International Rule of Law: Rise or Decline?* Oxford Academic, Oxford, 2019. p. 211–212. DOI: <https://doi.org/10.1093/oso/9780198843603.003.0014>.

countless variables of a problem. The solution to complex issues is usually hardened by the interconnectedness of the different possible problem-solving options, the overall dynamics of the issue and the lack of common (political) understanding or incomplete (scientific) knowledge regarding the basis of the problem. IEL requires the involvement of a wide range of states and non-state actors.¹¹⁶ Since the early history of environmental legislation, international organisations, in some cases, even non-governmental organisations and treaty bodies, have become extremely important in establishing non-legally binding norms, standards, and other programmes.

The global fight against climate change is an excellent example of the visualisation of how political misunderstandings and the lack of scientific knowledge could influence environmental legislation. As will be highlighted in the legislative solutions of IEL, framework conventions are particularly popular in environmental treaty-making as they provide the opportunity to '*legislate with hesitation*'. Under the term '*legislate with hesitation*', I mean that there is an overall willingness among the states to concentrate on an environmental issue, such as biodiversity loss or climate change. Still, some or many of the members of the international community are not yet ready to undertake enforceable international obligations, or time is still needed to form a common political understanding of how to regulate the environmental phoneme. Framework conventions provide the opportunity to establish common ground for further discussion without forming concrete obligations enforceable under international law. With the acceptance of the United Nations Convention on Climate Change (UNFCCC)¹¹⁷, a leap of faith was taken to combat climate change and global warming. Since 1992, a lot has happened in this area, but the failure of the Kyoto Protocol pointed out the shortcomings of the legislation. Many celebrated the adoption of the Paris Agreement.¹¹⁸ Still, it is often labelled as ineffective, and the last couple of years have shown how political will influences climate actions.

¹¹⁶ Ibid.

¹¹⁷ New York, 9 May 1992 (1994) UNTS Vol. 1771, p. 107.

¹¹⁸ Paris Agreement, Paris, 2015 (2016) UNTS Vol. 3156, p. 79.

CHAPTER 3.

A CHANGING MIND-SET TOWARDS ENVIRONMENTAL PROTECTION

The significance of eco-ethics and care for creation

"We must treat nature with the same awe and wonder that we reserve for human beings. And we do not need this insight in order to believe in God or to prove his existence. We need it to breathe; we need it for us simply to be."¹¹⁹

Whose duty is it to protect the environment? Although the question may seem simple at first glance, the answer is far from clear. Many people refuse to care for the environment because they are convinced that individual action is insufficient to solve global problems and that, in fact, only at the level of the state can adequate action be taken. They thus explain why they do not mainstream environmental considerations in their own living conditions. I strongly believe that our perspective, the belief system influencing our daily choices, greatly influences environmental protection. How do we see the environment and humanity's place in the ecosystem as a whole by declaring environmental conservation efforts? The answer to this question reflects ethical, social and, most importantly, religious considerations. Every one of us has some view on life, the beginning of the Earth, humanity's place in the ecosystem and our individual responsibilities concerning environmental conservation. Also, as highlighted in a considerable amount of research, social considerations have a significant effect on environmentalism, especially on the implementation of environmental legislation. Without the strong support of society, guidelines established to fight the adverse effects of climate change or aiming to preserve endangered species cannot reach the set

¹¹⁹ Ecumenical Patriarch Bartholomew, 2010.

goals.¹²⁰ There is a moral and ethical imperative to protect the diversity on Earth, and “*principles of compassion and respect, wildlife conservation honours the inherent value of all living beings, reflecting our interconnectedness with the natural world*”.¹²¹ Protecting and caring for the environment is a theme in all world religions. Looking beyond the Christian faith, the need to protect the environment is also intensely present in other systems. The Qur’an does not, in principle, approve of any illegal war against a state or community. This Islamic approach can also be understood in terms of environmental protection. By analysing the views of Islamic jurists, it can be seen that the unnecessary destruction of ecological values such as houses, trees and green areas is prohibited as a matter of principle and damage to environmental factors is only permissible if there is a military necessity. Thus, damage to the environment during war is only valid for the purpose of “*shield creation*”. The legitimacy of this requirement is also based on the prohibition of unnecessary destruction.¹²² Hinduism contains many references to the worship of the divine nature in the Vedas and other sacred texts. Millions of Hindus recite the Sanskrit mantras daily to honour rivers, mountains, trees, animals and the earth. Hindus believe that our environmental actions affect our karma. Virtuous behaviour creates good karma, and our behaviour towards the environment has karmic consequences. Because we have a free choice, even if we have harmed the environment in the past, we can choose to protect the environment in the future and replace karmic patterns that harm the environment with good karmic patterns.¹²³ The laws of armed conflict in ancient India were based on the principle of humanity. Ancient Hindu

¹²⁰ See Gore, Meredith L. – Ratsimbazafy, Jonah Henri –Lute, Michelle, L.: *Rethinking Corruption in Conservation Crime: Insights from Madagascar*. Conservation Letters, Vol. 6. No. 6. November 2013, pp. 430–438. DOI: 10.1111/conl.12032. Abbass, Kashif – Qasim, Muhammad .Zeeshan – Song, Huaming – Murshed, Muntsair –Mahmood, Haider – Younis, Ijaz: *A review of the global climate change impacts, adaptation, and sustainable mitigation measures*. Environmental Science and Pollution Research, Vol. 29. 2022, pp. 42539–42559. DOI: <https://doi.org/10.1007/s11356-022-19718-6>. United Nations Climate Change Secretariat: Considerations regarding vulnerable groups, communities and ecosystems in the context of the national adaptation plans; Least Developed Countries Expert Group. December 2018. Available at: <https://unfccc.int/sites/default/files/resource/Considerations%20regarding%20vulnerable.pdf>.

¹²¹ IFAW: What is the goal of wildlife conservation? 17 June 2024. Available at: <https://www.ifaw.org/international/journal/goal-wildlife-conservation>.

¹²² Nargül, Veysel: *Protection of the Environment in Time of War in Islamic Law*. International Journal of Social Sciences, Vol. 8. Issue 33. 2024, pp. 511–531. DOI: 10.52096/usbd.8.33.32.

¹²³ Jain, Pankaj: *10 Hindu Environmental Teachings*. 10 June 2011. Available at: https://www.huffpost.com/entry/10-hindu-environmental-te_b_846245?ir=Green.

texts clearly recognised the distinction between military targets and persons that could be attacked and those that could not.¹²⁴

In this chapter, I would like to emphasise some religious, ecclesiastical and moral norms that examine the protection of the environment. In particular, I will refer to environmental protection as a shared responsibility of humanity. Moreover, I would like to focus on the history and importance of care for creation and how religious considerations can appear in and influence international law. Eco-ethical considerations and green democratic values are also emphasised as crucial approaches to environmental protection.

3.1. Eco-ethic literature and the greening-of-religion in the context of environmental destruction

Looking back at the history of environmental degradation, we have very little information on the time before the industrial revolution, even though conquest, war and other human activities have always caused changes to the natural environment. As *Lynn White Jr.* noted, “*the word ecology first appeared in the English language in 1873*”.¹²⁵ Based on *White’s* view, the occidental nature of modern science and technology is largely responsible for current environmental concerns. Although, historically, other civilizations, including China, the Arab world and the ancient Greeks, have contributed to scientific discovery, all successful modern technology is “*western*”. The cited work also refers to the fact that the scientific and technological leadership of western countries is much older than the scientific revolution of the 17th century or the industrial revolution of the 18th century, as it had already started in the Middle Ages, resulting in the lack of “*understanding their nature or their present impact upon ecology*”.¹²⁶ Interestingly, in the work of *White*, religion appears as a hindrance to the environment and also refers to Christianity as “*the most anthropocentric religion the world has seen*”.¹²⁷ However, the author also stresses that more science and technology will not solve the pressing ecological problems of our time, given that both have developed fundamentally from Christian attitudes. For me, it was a fascinating suggestion that the concept of “*sacred*

¹²⁴ Sinha, Manoj Kumar: *Hinduism and international humanitarian law*. International Review of the Red Cross, Vol. 87. No. 858. June 2005, p. 285.

¹²⁵ White, Lynn Jr.: *The Historical Roots of Our Ecologic Crisis*. Science, Vol. 155. No. 3767. March 1967, p. 1203.

¹²⁶ Ibid pp. 1204–1205.

¹²⁷ Ibid p. 1205.

groves”,¹²⁸ which can be understood as a concept of the rights of nature, is far from Christianity. *White’s* study was published in 1967 when rights to the natural elements had not yet appeared in western ecological law literature and existed primarily as a segment of Indigenous Communities’ conceptions of nature. Amusingly, *White* also emphasised *Saint Francis of Assisi’s* different approach towards animals (also labelled as the Franciscan doctrine of the animal soul) and nature, whose work intensively appears in modern care for creation literature. The author proposed Francis “as a patron saint for ecologists”.¹²⁹

Overall, *White’s* work has raised some interesting questions about the relationship between the environment and Christian religion. However, it also points out the radical changes in religious understanding of nature that have taken place since the 1960s. Today, church leaders are advocating solutions to the ecological emergency, often stressing the importance of concepts that were long “alien” to western religious understanding. A striking example of this is the view of Indigenous Communities that humans are part of nature and not its rulers, which is fundamentally reshaping the place and responsibilities of humanity in environmental protection. The 1970s were a time of scientific discovery as humankind began to understand how biology works. It was also the beginning of modern environmental protection, as serious ecological problems, including desertification, climate change, global warming, and species extinction, were recognised on the universal level. Newly recognised environmental issues found their way into legislation at national and international levels.¹³⁰ Simultaneously, our point of view on nature has also been changing, causing a shift in religious understanding. I believe that these changes can lead towards a new approach to environmental conservation, resulting in positive changes to humanity’s mind-set.

White’s claims have been the subject of intense theological debate since the 1970s.¹³¹ The first reaction was provided by *Francis Schaeffer*, the Reformed Protestant founder of the Swiss-based L’Abri community. *Schaeffer* basically accepted *White’s* insights that man’s perceptions and understanding of the environment, man and God, fundamentally influence

¹²⁸ Ibid p. 1206.

¹²⁹ Ibid p. 1207.

¹³⁰ See The relevant chapter of this book on the history of environmental law and Philippe Sands: *Principles of International Environmental Law*. Third Edition, Cambridge University Press, Cambridge, 2012, pp. 22–49.

¹³¹ Northcott, Michael, S.: *Reformed Protestantism and the origins of modern environmentalism*. *Philosophia Reformata*, Vol. 83. No. 1, pp. 19–20. DOI: <https://doi.org/10.1163/23528230-08301003>.

the individual's attitude towards the environment. At the same time, *Schaeffer* explained the very basis of creation protection in the acceptance that God created the Earth and that the redemptive form of the earth bears the characteristics of the present world according to biblical prophecy, which also justifies the need for its protection.¹³²

The green shift of the Catholic Church started as early as the 1970s. John Paul II was fond of the environment and, at a young age, often spent time in the wilderness. As a philosopher, he defended the philosophy of personalism, which highlights the special “*worth and dignity in humans*” and, in this manner, strengthened the existing divide between man and nature.¹³³ In 1979, John Paul II published the encyclical “*Redemptor Hominis*”. Environmental considerations appear under the title “*What modern man is afraid of*”, and in this chapter, the Pope wrote about the relationship between humanity and the environment in a forward-looking manner.

*“At the same time, exploitation of the earth not only for industrial but also for military purposes and the uncontrolled development of technology outside the framework of a long-range authentically humanistic plan often bring with them a threat to man's natural environment, alienate him in his relations with nature and remove him from nature. Man often seems to see no other meaning in his natural environment than what serves for immediate use and consumption. Yet it was the Creator's will that man should communicate with nature as an intelligent and noble “master” and “guardian”, and not as a heedless “exploiter” and “destroyer”.”*¹³⁴

In the same year, John-Paul II declared that St. Francis of Assisi is the patron saint of “*those who promote ecology*”:

*“among the holy and admirable men who have revered nature as a wonderful gift of God [...] Cantic of the Creatures which praises God by reflecting on the goodness of Brother Sun, Sister Moon, and the rest of nature.”*¹³⁵

¹³² Schaeffer, Francis: *The God Who Is There –Speaking Historic Christianity into the Twentieth Century*. University of Chicago Press, Chicago, 1968.

¹³³ Rice, Christopher: *Pope John Paul II and care for God's creation*. 1 April 2022. Available at: <https://laudatosimovement.org/news/pope-john-paul-ii-caring-creation/>.

¹³⁴ John Paul II: *Redemptor Hominis*. Section 15. Available at: https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_04031979_redemptor-hominis.html.

¹³⁵ Saint Francis of Assisi, As a patron of ecology, John Paul II as a perpetual memorial. Available at: <https://www.kateri.org/saint-francis-of-assisi/>.

Care for creation also appears in other divisions of Christianity¹³⁶, including Protestantism: “*affirm a commitment to work vigorously to protect and heal the creation for the glory of the Creator, as we wait for the restoration of the creation to wholeness.*”¹³⁷ The Calvin Centre for Christian Scholarship conducted intensive research in Christian environmental studies and published “*Earthkeeping: Stewardship of Creation.*”¹³⁸ The Reformed Church also powerfully highlights that the Lord called us “*to be stewards of his natural world.*”¹³⁹ In the last decades, three synodal actions on creation care have been accepted, which reflects the work already started by individuals and congregations. In the early 1990s, in response to various requests, the “*synodal task force on CRC publications and the environment*” established study guides on the ethical framework for environmental care. Secondly, the 1997 synod called the attention of churches to the Reformed Ecumenical Council’s report “*Just Care of the Earth and Creation*”, which provided recommendations for use by churches, departments, and institutions. Finally, a website with up-to-date ecological justice resources was established.¹⁴⁰ The Micah Network, collecting Christian agencies and churches from 38 countries, also accepted a “*Declaration on Creation Stewardship and Climate Change*”¹⁴¹ in 2009, emphasising the responsibility of humanity with respect to current environmental problems:

*“We, however, have not always been faithful stewards. Through our ignorance, neglect, arrogance and greed, we have harmed the earth and broken creation’s relationships. Our failure to be faithful stewards has caused the current environmental crisis, leading to climate change, and putting the earth’s ecosystems at risk. All creation has been subjected to futility and decay because of our disobedience.”*¹⁴²

¹³⁶ Eastern Orthodoxy, Oriental Orthodoxy, Roman Catholicism, and Protestantism. In: McGinn, Bernard J. – Spencer, Sidney: *Contemporary Christianity*. Britannica. 24 February 2025. Available at: <https://www.britannica.com/topic/Christianity/Contemporary-Christianity>.

¹³⁷ Christian Reformed Church: *Transforming lives and communities worldwide; Agenda for Synod*. 2010, p. 46.

¹³⁸ See Wilkinson, Loren: *Earthkeeping in the Nineties: Stewardship of Creation*. Wipf and Stock, Eugene, 2003.

¹³⁹ Christian Reformed Church: *Creation Care*. Available at: <https://www.crcna.org/welcome/beliefs/position-statements/creation-care>.

¹⁴⁰ Agenda for Synod, p. 44.

¹⁴¹ Micah Network: *Declaration on Creation Stewardship and Climate Change*. International Bulletin of Missionary Research, Vol. 33. No. 4, pp. 182–184. DOI: <https://doi.org/10.1177/239693930903300404>.

¹⁴² Ibid, p. 182.

Environmental protection is a moral and ethical issue and closely connects with economic development and a sustainable future. The argument of the ‘conservatives’ is that environmental regulation, indeed all regulation, impedes economic development. In contrast, *Cohen* argues that environmental regulation encourages technological innovation. Regulatory efforts toward a cleaner environment have become a stimulus for “greening” the vehicles and devices we use in our daily lives. One need only think of solar panels, electric or low-emission vehicles and organic food.¹⁴³ Other authors deny the shared responsibility of humans and humanity for today’s environmental problems. In *Fahlquist’s* view, individuals who have reasonable alternatives, capacity and resources to do something about the environment should be held responsible. At the same time, a distinction must be made between individual and institutional actors. The latter have the power and resources to influence large numbers of individuals with alternative capacities and resources. For this reason, the author argues that much of the responsibility should be placed on governments and corporations. In the author’s view, such institutional actors are responsible (in a forward-looking sense) because they have the power and resources to do more to solve environmental problems and the ability to make it easier and less costly for individuals to act in an environmentally friendly way.¹⁴⁴ In this respect, I would disagree with the author as, to my mind, it is precisely this vision that justifies the failure to take many environmental measures, always choosing the “best available” technology and options at institutional and individual levels. The real turning point is when we are able to go beyond our means and make a conscious effort to put environmental considerations first.

The question is whether democracy can ensure environmental sustainability. According to some researchers, there is no logical or unconditional link between democratic decisions and environmental sustainability.¹⁴⁵ The term ecological democracy (or green democracy, biocracy) emerged in the 1980s as a term used to describe the impact of environmental science and biology on law and society. Ecological democracy is also referred to in the literature as environmental democracy or green

¹⁴³ Cohen, Steven: *The Ethical Imperative of Environmental Protection*. Columbia SPS, 8 July 2024. Available at: <https://sps.columbia.edu/news/ethical-imperative-environmental-protection>.

¹⁴⁴ Fahlquist, Jessica Nihle’n: *Moral Responsibility for Environmental Problems—Individual or Institutional?* *Journal of Agricultural and Environmental Ethics*, Vol. 22. April 2009, pp. 110–111.

¹⁴⁵ Wong, James K.: *A Dilemma of Green Democracy*. *Political Studies*, Vol. 64(1S), 2016, pp. 136–155. DOI: 10.1111/1467-9248.12189.

democracy. The term ‘biocracy’ is associated with the physiologist *Walter Bradford Cannon* and has been used to represent “*the power of life science knowledge in modern society*”.¹⁴⁶ Following the emergence of the ‘green’ democratic ideal, green political parties have been formed at national, regional and local levels. Four pillars of green politics are generally identified in the literature: ecological responsibility, grassroots participatory democracy, social justice, and peace and non-violence.¹⁴⁷ The core values found in green politics can be seen to be linked to the building blocks of sustainable communities and the basic idea of sustainability.

3.2. Care for creation and environmental protection

Religious leaders have a significant role in guiding believers and establishing guidelines to preserve the environment. Although environmental protection appears in the main world religions, some ecclesiastical dignitaries focus even more on ecological issues and invite leaders, states, and humanity to strengthen environmental conservation efforts.

Ecumenical Patriarch Bartholomew of Constantinople, also known as the “*Green Patriarch*”, has initiated the discussion on the need to mobilise moral and spiritual forces to achieve harmony between humanity and nature.¹⁴⁸

*“To commit a crime against the natural world is a sin. For humans to cause species to become extinct and to destroy the biological diversity of God’s creation, for humans to degrade the integrity of the Earth by causing changes in its climate, stripping the Earth of its natural forests, or destroying its wetlands...for humans to contaminate the Earth’s waters, its land, its air, and its life, with poisonous substances—these are sins.”*¹⁴⁹

Pope John Paul II, in his homily on the World Day of Peace on 1 January 1990, referred to a new ecological awareness:

¹⁴⁶ Caldwell, Lynton Keith: *Biocracy: Public Policy and the Life Sciences*. Routledge, New York 2019.

¹⁴⁷ Spretnak, Charlene – Capra, Fritjof: *The Global Promise of Green Politics*. E. P. Dutton, New York, p. 1984.

¹⁴⁸ Greek Orthodox Archdiocese of America: Biography of His All Holiness Patriarch Bartholomew. Available at: <https://www.goarch.org/-/biography-ecumenical-patriarch>.

¹⁴⁹ Speech of Bartholomew I at the Greek Orthodox church in Santa Barbara, California, on November 8, 1997. Source: Preston, Charles: *Bartholomew I Eastern Orthodox patriarch*. Britannica. Available at: <https://www.britannica.com/biography/Bartholomew-I>.

*“Faced with the widespread destruction of the environment, people everywhere are coming to understand that we cannot continue to use the goods of the earth as we have in the past. The public in general as well as political leaders are concerned about this problem, and experts from a wide range of disciplines are studying its causes. Moreover, a new ecological awareness is beginning to emerge which, rather than being downplayed, ought to be encouraged to develop into concrete programmes and initiatives.”*¹⁵⁰

The Pope also identified war as a threatening factor, referring to its unforeseen and serious environmental consequences. In his view, despite international conventions banning chemical, bacteriological and biological warfare, laboratory research continues to develop new offensive weapons capable of altering the balance of nature. Moreover, he is convinced that any form of war can cause incalculable ecological damage on a global scale.¹⁵¹

The encyclical *“Laudato Si – On Care of Our Common Home”*¹⁵² is Pope Francis’ first encyclical, which was published in May 2015. In the encyclical, Pope Francis follows in the footsteps of Francis of Assisi, and together, they praise the Creator for the created world. Indeed, the opening words of the eponymous hymn are the opening words of St Francis of Assisi’s *Canticle of Creation*¹⁵³. Pope Francis relies on the Catholic Church’s social teaching, the environmental documents of the various episcopal conferences, the statements of the Church’s sister¹⁵⁴ churches, and especially the writings of Ecumenical Patriarch Bartholomew of Constantinople on this subject. The encyclical consists of six chapters, and the Pope declares in a strong statement that mismanaged and plundered nature requires an *“ecological conversion”*, a radical turn in which man takes upon himself the committed responsibility to protect nature by preserving the home that we all share. *Laudato Si* included the fight against throwaway culture, waste and

¹⁵⁰ Message of His Holiness Pope John Paul II. For the Celebration of the World Day of Peace 1 January 1990. p. 1. Available at: <https://digitalrepository.unm.edu/cgi/view-content.cgi?article=2102&context=nrlj>.

¹⁵¹ Ibid p. 6.

¹⁵² Encyclical letter, ‘Laudato Si’ of the Holy Father Francis on Care for our Common Home. Available at: https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html.

¹⁵³ The Canticle of the Sun, known as Canticle of the Creatures and Laudes Creaturarum (Praise of the Creatures).

¹⁵⁴ The term refers to particular Catholic and non-Catholic Churches. Pope John Paul II approved the Note on the Expression of “Sister Churches” in the Audience of 9 June 2000.

pollution. Also, it treats climate as a “*common good*”, a “*complex system linked to many of the essential conditions for human life*”.¹⁵⁵ The second section concentrates on the issue of water. In this regard, the encyclical refers to the issue of sustainable use and also to the overconsumption and waste in what can be considered developed regions. Fresh drinking water appears as an essential natural resource “*indispensable for human life and for supporting terrestrial and aquatic ecosystems*”.¹⁵⁶ Furthermore, it explicitly recognises access to clean and healthy drinking water as a human right and explains that it is a precondition for the enjoyment of other human rights.¹⁵⁷ The following section included nature conservation and biodiversity loss as a concern. In this section, the encyclical explains that humanity does not have the right to exploit natural resources at levels that lead to habitat destruction and species extinction. It also highlights the importance of every form and appearance of living creatures.¹⁵⁸ The fourth section considers the social dimensions of global change as well as “*social breakdown*” and increased violence.¹⁵⁹ Furthermore, the encyclical refers to not just social but to global inequality, referring to an earlier statement: “*Both everyday experience and scientific research show that the gravest effects of all attacks on the environment are suffered by the poorest.*”¹⁶⁰ Pope Francis points out that a truly ecological approach is also a social one, taking into account not only the need to protect the environment but also the different opportunities and specific needs of the poorest sections of society.¹⁶¹

The encyclical’s understanding of overpopulation and population growth is fascinating, and in some respects, it goes against the general rhetoric and blames “*extreme and selective consumerism*”. It shifts the dimension of global population growth to the issue of unequal production and consumption, emphasising that a significant proportion of the food produced and manufactured is thrown away.¹⁶² The level of food waste is truly incredible, even in Europe. Around 42 million people cannot afford to eat quality food every other day, meanwhile, according to Eurostat data, 132 kg of food waste is generated every year by each European, which

¹⁵⁵ Laudato Si, paras 23–26.

¹⁵⁶ Laudato Si, para 28.

¹⁵⁷ Laudato Si, para 30.

¹⁵⁸ Laudato Si, paras 32–34.

¹⁵⁹ Laudato Si, paras 43–46.

¹⁶⁰ Original source: Bolivian Bishops’ Conference, Pastoral Letter on the Environment and Human Development in Bolivia, *El Universo, don de Dios para la vida*, 23 March 2012, p. 17.

¹⁶¹ Laudato Si, para 49.

¹⁶² Laudato Si, para 50.

amounts to 59 million tonnes per year.¹⁶³ Based on the data published by the UNEP in 2019, 931 million tonnes of food waste were generated across the household, food service and retail sectors, with a per capita average of 121 kilograms per year.¹⁶⁴ Another UN estimation showed that globally, around 13.2 per cent of food produced is lost between harvest and retail, while an estimated 19 per cent of total global food production is wasted.¹⁶⁵

The encyclical explicitly refers to the destruction caused by war: “*War always does grave harm to the environment and to the cultural riches of peoples, risks which are magnified when one considers nuclear arms and biological weapons*”.¹⁶⁶ The Holy See supports peace, which includes respect for international standards for the protection of fundamental human rights. *Michael Wallace Banach*, Archbishop Emeritus and Apostolic Nuncio, recalled at a conference organised by Pázmány Péter Catholic University in 2022 that addressing environmental damage is an important area of the Holy See’s diplomatic activity.¹⁶⁷ The last parts of the first chapter concentrate on the weak responses and the variety of opinions regarding different solutions proposals.

In the second chapter of the encyclical, Pope Francis speaks of man’s “*tremendous responsibility*” towards creation, recalling that the environment is a gift, the heritage of all humanity. In the spirit of biblical revelation, man lives in a triple relationship: with the created world, with himself and his fellow human beings, and with God. All creatures have a place in the created order, and abuse of any of them, in the spirit of the former context, is an affront to human dignity. Nevertheless, the protection of the living beings of the created world should always be accompanied by compassion and concern for human beings. There is, therefore, a need for responsibility towards the communion. It also refers back to the book of creation and the harmony between man and nature¹⁶⁸

¹⁶³ Eurostat: *Food waste and food waste prevention – estimates*. Available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Food_waste_and_food_waste_prevention_-_estimates.

¹⁶⁴ UNEP: *Food Waste Index Report Think Eat Save Tracking Progress to Halve Global Food Waste*. 2024, p. 66. Based on the Report’s definition, food waste “*is defined as food and the associated inedible parts removed from the human food supply chain*”.

¹⁶⁵ UN: *Stop food loss and waste. For the people. For the Planet*. Available at: <https://www.un.org/en/observances/end-food-waste-day>.

¹⁶⁶ *Laudato Si*, para 57.

¹⁶⁷ Tahyné Kovács, Ágnes: *A teremtés védelmének sajátos perspektívája: a katonai erő és a környezeti károk alkalmazása* [A specific perspective on the protection of creation: the use of military force and environmental damage]. IAS, Vol. 2. 2023, pp. 200–201.

¹⁶⁸ *Laudato Si*, para 66.

“[...] human life is grounded in three fundamental and closely intertwined relationships: with God, with our neighbour and with the earth itself. According to the Bible, these three vital relationships have been broken, both outwardly and within us.”

In the upcoming chapters, the encyclical rejects technocracy and highlights the responsible stewardship of the created world.¹⁶⁹ Technology appears both as a force at the service of humanity and as a source of danger, especially when only a restricted part of humanity has the economic resources to exploit the latest achievements.¹⁷⁰

Neither digitalisation nor artificial intelligence has a unified accepted definition. In general, AI means *“the ability of a digital computer or computer-controlled robot to perform tasks commonly associated with intelligent beings”*.¹⁷¹ There is no doubt that digitalisation, and in particular artificial intelligence (AI), is both an opportunity and a threat to the environment. Never has humanity had so many opportunities to harness innovative solutions to solve ecological problems. However, since the dawn of technological development, innovation has often led to environmental degradation and habitat destruction. The development, deployment and use of digital solutions place a significant burden on the environment, and they are also demanding in terms of operation and resources, so the whole life cycle of AI should not be ignored when considering its environmental performance. The development and production of AI technologies also involve significant emissions. Even if the energy is mainly from sustainable sources, it contributes to greenhouse gas emissions, especially during operation. Another aspect to consider is the issue of electronic waste (so-called e-waste), which occurs with all digital devices. The application of artificial intelligence has a significant impact on our planet, but there is also a growing demand for the development of *“Eco-friendly (Green) AI”*, which means more energy-efficient solutions using renewable energy sources and sustainable hardware designs.¹⁷² There are some AI solutions where environmental protection is the primary goal, and in other cases, ecological considerations are secondary to the technology. Overall, the application

¹⁶⁹ See Chapter Three of Laudato Si.

¹⁷⁰ Particularly in paras 103–104.

¹⁷¹ Copeland, B. J.: *artificial intelligence*. 12 July 2024. Britannica. Available at: <https://www.britannica.com/technology/artificial-intelligence>.

¹⁷² Bolón-Canedo, Verónica – Morán-Fernández, Laura – Cancela, Brais – Alonso-Betanzos, Amparo: *A review of green artificial intelligence: Towards a more sustainable future*. Neurocomputing, Vol.599. 2024, p.128096, DOI: <https://doi.org/10.1016/j.neucom.2024.128096>.

of AI can contribute to the green transition and the achievement of emission reduction targets in many areas. First, AI can help to rationalise resource use and reduce greenhouse gas emissions. It can contribute to sustainable resource management and environmental governance. Furthermore, it can be applied in the agricultural production sector to optimise the use of land and water resources, among others. Referring back to the fight against food waste and the issue of access to clean water, the advantages and opportunities of digital solutions can certainly be exploited in these areas. In this context, AI can contribute to ensuring third-generation human rights, such as the rights to food and water.¹⁷³ In summary, artificial intelligence has several advantages. Firstly, it can automate significant but repetitive and time-consuming tasks. In addition, AI can provide insight into unstructured data that previously required human handling and analysis and can integrate the work of thousands of computers and other resources. Some practical applications of AI can benefit the environment, including better environmental management, such as the management of watersheds or forests. By correcting industrial performance, AI can optimise water, energy and land use, leading to better environmental performance. AI can be applied to safety and environmental risk reduction, disaster risk management, and nuclear and space technology, reducing the number of human interactions required. Finally, it can also be applied to improve organisational decision-making, streamline results, and improve the use of resources.¹⁷⁴

The encyclical sharply criticises international efforts to protect the environment and emphasises the need for a common plan: “*Interdependence obliges us to think of one world with a common plan*”.¹⁷⁵ It also stresses the need for enforceable international agreements with the following reasoning: “*since local authorities are not always capable of effective intervention*”.¹⁷⁶ In this regard, I would note that strong international legal regulation is useless if adequate measures are not taken at the state level to enforce it. International regulation alone will not solve the ecological emergency if it is not coupled with other provisions to support implementation and

¹⁷³ See Quintavalla, Alberto: Artificial Intelligence and the Right to a Healthy Environment. In: Quintavalla, Alberto – Temperman, Jeroen (Eds.): *Artificial Intelligence and Human Rights*. Oxford, Oxford University Press, 2023. Part VIII: Artificial Intelligence & Third Generation Rights.

¹⁷⁴ Nishant, Rohit – Kennedy, Mike – Corbett, Jacqueline: *Artificial intelligence for sustainability: Challenges, opportunities, and a research agenda*. International Journal of Information Management, Vol. 53. 2020, pp. 1–13. DOI: <https://doi.org/10.1016/j.ijinfomgt.2020.102104>.

¹⁷⁵ Laudato Si, para 164.

¹⁷⁶ Laudato Si, para 173.

enforcement, including financial aid for developing and poor countries. The ratification of mutually supportive and reinforcing international instruments requires further attention. Examples include the call for the joint ratification of the Convention on Trade in Endangered Species (CITES) and the Conventions against Corruption (UNCAC) and Organised Crime (UNTOC) so that the effective implementation of measures to protect the environment is not hindered by illegal activities linked to the initiatives.¹⁷⁷

The last chapter of the encyclical highlights the importance of education in relation to ecology and spirituality. Individual influence is also significant, as changes in our lives, the pro-environment changes that we are able to achieve, can and will influence decision makers to implement environmentally friendly solutions.¹⁷⁸

In summary, *Laudato Si - On Care of Our Common Home* relies heavily on the considerations towards environmental issues of past and present religious leaders while at the same time declaring important statements to consider separate from its religious content. The lack of international action, social inequalities, the specific needs of developing countries and digitalisation are among the key themes in the environmental literature that continue to occupy researchers. Furthermore, we must not forget that religious and ideological beliefs have a significant impact on our relationship with the environment, which, to a large extent, permeates our everyday choices.

The Catholic Church's teaching has increasingly focused on environmental protection and on the role of man in nature and its relationship with creation. In 2019, Pope Francis spoke about the Church's evangelising mission in his address to the World Congress of the International Association of Penal Law¹⁷⁹ and called for action in the area of environmental crimes.¹⁸⁰ The history of environmentalism within the Catholic Church strongly resonates with the environmental conferences in the international sphere. In 1972, the message of Pope Paul VI to the

¹⁷⁷ For details *See* Chapter 5.

¹⁷⁸ *Laudato Si*, para 206.

¹⁷⁹ Address of His Holiness Pope Francis to participants at the World Congress of the International Penal Association. 15 November 2019. Available at: https://www.vatican.va/content/francesco/en/speeches/2019/november/documents/papa-francesco_20191115_diritto-penale.html.

¹⁸⁰ Tahyné Kovács, Ágnes: Az ökokódium egyes jogi és teremtésvédelmi vonatkozásairól [On some legal and care for creation aspects on ecocie]. In: Badacsonyi, Zoltán (Ed.) *Betű és lélek IV. Életvédelem – „Alkossunk embert a képünknekra”* [Letter and Spirit IV. Protection of Life – “Let us make man in our image”]. Petrecz Sándor Foundation, Budapest, 2024, pp. 382–383.

United Nations Conference on the Environment in Stockholm has to be mentioned, among the first Vatican's statements of ecological importance. Earlier, in his encyclical *Gaudium et Spes*¹⁸¹, the Pope had already made a strong statement that God had ordained the Earth, with all its treasures, for the use of all people and all nations. Therefore, the goods created must be distributed to all in fair shares, under the guidance of justice accompanied by love. Man who, hence, is exploiting created goods must regard his rightly possessed wealth as not only his own but also common, in the sense that it is not only for his benefit but for the benefit of others.¹⁸² These statements can be connected to environmentally-related territorial concepts, later established in international law, such as the common heritage of mankind.

¹⁸¹ Pope Paul VI: *Gaudium et Spes*. Pastoral Constitution on the Church in a Modern World. 7 December 1967. Available at: https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html.

¹⁸² Tahyné Kovács, Ágnes: *Harc a természet ellen: Az ökokidum egyházi és világi felfogásáról* [Fights against nature: About the ecclesiastical and secular perceptions of ecocide]. In: Puskás, Attila – Sággy, Ádám (Eds.): „*Boldogok a békességszerzők ...*” (Mt 5, 9): *Az Egyház és a keresztények szerepe a társadalmi konfliktusok feldolgozásában és a megbékélésben: Teológiai tanulmányok* [“Blessed are the peacemakers...” (Mt 5, 9): the role of the Church and Christians in social conflict resolution and reconciliation: Theological Studies], St Stephen's Society, Budapest, 2024, p. 161.

CHAPTER 4.

THE HISTORY AND DEFINITION OF ECOCIDE IN LAW AND LITERATURE

*But man is a part of nature,
and his war against nature
is inevitably a war against himself.*¹⁸³

As was already highlighted, international environmental law is quite a new area of public international law. Environmental law is now a complex system with a wide range of regulatory areas covering a variety of issues. Some legislation contains general, overarching provisions, while others focus on protecting specific ecological elements. Thus, within international environmental law, a distinction can be made between regulations that define the conduct or action to be taken by states, and general principles that determine how an action should be taken, as well as regulations designed to protect specific environmental elements. The latter is known as sectoral regulation. Ecocide is even a newer concept, especially in the legal sphere. This chapter will briefly summarise the history of ecocide and explain the terminology. Also, since it is questionable whether ecocide can be considered a term in law or if that is yet to be formulated, I want to detail the difference between law and concept, explaining the legal nature of ecocide on the grounds of public international law. As a side note to this chapter, although I am trying to avoid lengthy word-for-word citations, I believe displaying the most important definitions in their original form is necessary.

¹⁸³ Carson, Rachel: *Silent Spring*, 1962.

4.1. A brief history of ecocide

4.1.1. Early history of ecocide

In the preceding chapters, we have already followed the conceptualism of environmental harm in international law. In this chapter, I would like to summarise the history of ecocide as a legal concept. It is important to set the exact scope of the history of ecocide since the penalisation of environmental harm or damage has a much longer past in domestic legislation. In the following, the history of ecocide is narrowed down to concrete occurrences in the international sphere. As highlighted in the introductory chapter, the notion of ecocide can be traced back to the 1970s, specifically to the United States of America's (USA) war against Vietnam. It is well known that the USA caused severe ecological damage during the Vietnam War effort, including the use of pesticides, the destruction of farmland, and the use of bulldozers.¹⁸⁴

As part of the Vietnam War effort, the United States of America applied several new techniques, including toxic chemical deforestation and napalm bombs. Operation Ranch Hand was an herbicide spraying program that lasted between 1962 and 1971, spraying 19 million gallons of defoliants in over 20 per cent of tropical forests and 36 per cent of mangrove forests in southern Vietnam. The colourful pesticides, Agent Orange, Agent Purple, Agent White, Agent Green, Agent Blue, and Agent Pink, were colourless in real life and were named after the colour bands on the drums in which each type of chemical was stored. Of the chemical compounds applied, the most commonly used was Agent Orange, which contained dioxin¹⁸⁵ as its main active ingredient, with extremely harmful effects.¹⁸⁶ During the war, 44 million litres of Agent Orange and similar types of herbicides were sprayed on 2.4 million hectares of Vietnamese jungle from low-flying C-123 aircraft of the United States Air Force between 1962 and 1971. Their deforestation planes "cleared"

¹⁸⁴ See Orians, H. Gordon, Pfeiffer, W. E.: *Ecological Effects of the War in Vietnam*. Science, Vol 168, Issue 3931. pp. 544–554. DOI: 10.1126/science.168.3931.544.

¹⁸⁵ Dioxin is a heterocyclic, organic, non-aromatic compound. The chemical formula of dioxin is $C_4H_4O_2$.

¹⁸⁶ Phuong Thuy, Dam Thi – Van Bac, Nguyen: Impact of American Large Scale Destruction of Forests on Natural Environment and Ethnic Minorities in South Vietnam during the Vietnam War (1954–1975). In: Briesen, Detlef (Ed.): *Armed Conflict and Environment From World War II to Contemporary Asymmetric Warfare*. Nomos Verlagsgesellschaft, Baden-Baden, Germany, 2018. pp. 91–92.

10 per cent of the dry land forests and 36 per cent of the swamp forests at least once. Ecologists now estimate the time needed for the regeneration of the species-rich ecosystem in the latter to be a century. Dioxins are compounds that can cause an immune deficiency, which reduces the body's natural defence mechanisms. Not only did the Vietnamese population suffer long-term and severe health defects, but some studies have found higher than average rates of miscarriages, open spinal columns and deformed babies in US veterans' families, too. However, it was not just dioxins that were used as part of "Operation Ranch Hand." The 8,200 tonnes of Agent Blue were actually Dimethyl-arsenate sodium ($C_2H_6AsNaO_3$) used to destroy rice paddies, and it was described as "*yellow rain*". In 1969, there were already articles in South Vietnamese newspapers about the significant increase in congenital disabilities and deformities among the offspring of people living in the treated areas. In Bui Dai, 523 cases, including a large number of spontaneous abortions, were associated with chemical contamination after 1000 people had been examined. In the defoliated villages, the survival rate of newborns became 2.4 times lower in the first year between 1966 and 1971 and 1.4 times lower between 1981 and 1986. In the treated districts, dioxins capable of bio-accumulating were clearly detectable in fish, which is the main food of the swamp forest inhabitants, as well as in breast milk.¹⁸⁷

As we can see, the Vietnam War effort has led to severe and long-lasting damage to the natural environment and human health. These adverse effects were experienced not only by local residents but also by the soldiers who carried out the war effort. In this respect, parallels can be drawn with nuclear testing, as the experiments carried out during the Cold War not only had adverse effects at the site of the experiment but also had serious consequences for the soldiers who carried out the experiments. It is no coincidence that both US soldiers and members of the French military order are claiming damages against their own countries.

Although the emergence of the concept of ecocide is inextricably linked to the activities of the United States in Vietnam, it should be remembered that many other powers were also carrying out extensive environmental destruction during that period, even on their own territory. After the collapse of the Soviet Union, a revealing study of the environmental destruction of the former world warlord came to light. In the words of the authors of the research, "*no other industrialised civilisation has polluted*

¹⁸⁷ Darvas, Béla: *A piszkos tizenkettő és felebarátai 2. A vietnami veterán és garéi árnyéka.* [The Dirty Twelve and their Neighbours]. 2. The Vietnam Veteran and the Shadow of the Garé]. *Élet és Tudomány*, Vol. 54. pp. 1451–1453.

its land, air, water and population so systematically and for so long."¹⁸⁸ The book here referred to, which reveals startling data, shows that in the last hundred or so years, industrialisation and warfare have sacrificed the natural environment, essential for human life, whose quality ensures prosperity and the inalienable rights of man.

The use of the term ecocide was first documented in 1970 when *Professor Arthur W. Galston* argued for a new international agreement to ban ecocide.¹⁸⁹ Galston was one of the first to speak out against the use of pesticides in Vietnam in 1966, referring to their ecological and human health effects. Galston was then Head of the Yale University Botanical Institute and was a dedicated researcher on the subject until his death in 2008.¹⁹⁰ At the heart of the environmental discourse of the 1970s was the 1972 UN conference, where Swedish Prime Minister Olof Palme explicitly referred to ecological warfare in his speech as ecocide. In this speech, Palme referred to ecological warfare as an "*outrage*", explicitly naming the methods used by the US in the Vietnam War: "*the immense destruction brought about by indiscriminate bombing, by large-scale use of bulldozers and herbicides is an outrage sometimes described as ecocide, which require international attention ... It is of paramount importance [...] that ecological warfare cease immediately.*"¹⁹¹ Not just Olof Palme but other heads of state at the conference denounced the war in human and environmental terms, including *Indira Gandhi* from India, the leader of the Chinese delegation *Tang Ke*, and the delegates from Iceland, Tanzania, Romania, Algeria and Libya.¹⁹²

However, although ecocide is not officially mentioned in the final outcomes of the Stockholm Conference – such as the Declaration – several parallel events have focused on it. The working group on the Law of

¹⁸⁸ Fashbeck, Murray – Friendly, Alfred Jr.: *Ecocide in the USSR: Health and Nature under Siege*. Basic Books, 1993. p. 1.

¹⁸⁹ Conference on War and National Responsibility. In other sources, the name of the conference is War Crimes and National Conscience. In: Zierler, David: *The Invention of Ecocide: Agent Orange, Vietnam, and the Scientists Who Changed the Way We Think About the Environment*. University of Georgia Press, Athens, Georgia, 2011. p. 15.

¹⁹⁰ Ibid. p. 17.

¹⁹¹ The speech of Olof Palme, former Swedish prime minister, at the Stockholm Conference on Human Environment. The speech is available at https://www.youtube.com/watch?time_continue=639&v=0dGIsMEQYgI&feature=emb_title. About ecocide from 8:30 till 8:38.

¹⁹² Gauger, Anja – Rabatel-Fernel, Mai Pouye – Kulbicki, Louise – Short, Damien – Higgins, Polly: *The Ecocide Project 'Ecocide is the missing 5th Crime Against Peace'*. 2013. p. 5. Available at https://sas-space.sas.ac.uk/4830/1/Ecocide_research_report_19_July_13.pdf.

Genocide and Ecocide was established at the Folkets Forum or the People's Summit. At the Environmental Forum, ecocide was a recurring topic, including the issue of the Vietnam War. For the discussion at the Environmental Forum, the representative of the USA, *William D. Ruckelshaus*, the Environmental Protection Agency Administrator at the time, was also invited. Based on the literature, the negotiation at the Forum was tense, but – understandably – Ruckelshaus tried to avoid total confrontation and later announced to the press that “*he sensed lynching.*” One question was: “*Are you going to tell the president that everyone at the conference and everyone you met demanded the United States withdrawal from Vietnam?*” and he answered: “*I shall tell him that I was invited to a very interesting meeting where there were a lot of people who seemed to regard the issue of war and environment as one and the same.*”¹⁹³ The Stockholm Conference successfully raised awareness about ecocide. It showed how NGOs are of paramount importance to embrace an environmental problem that later finds its way to the international legal sphere. The Working Group on Crimes against the Environment was established in 1972 following the Stockholm Conference. In 1973, it submitted the proposal for the “*Ecocide Convention*” to the United Nations.¹⁹⁴

Based on Article 1 of the proposed Ecocide Convention, the rules would have been applicable in times of war and peace: “*The Contracting Parties confirm that ecocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.*”¹⁹⁵ Interestingly, not just the crime of ecocide was included in the proposal, but also other relevant punishable forms, including the “*conspiracy to commit ecocide,*” “*direct and public incitement to ecocide,*” “*attempt to commit ecocide,*” and “*complicity in ecocide.*”¹⁹⁶ Even though the draft by *Falk* was never adopted as an international convention open for signature, its impact on the development of the ecocide concept is indisputable. One could say that the draft provided the first comprehensive definition of ecocide in legal language, which opened the way for scientific discourse on the matter. The subsequent history of ecocide is already linked to a long process of negotiation within the International Law Commission.

¹⁹³ Björk, Tord: *The emergence of popular participation in world politics – United Nations Conference on Human Environment 1972*. Fall, 1996. p. 20. Available at <https://www.folkrorelser.org/johannesburg/stockholm72.pdf>.

¹⁹⁴ Falk, Richard A.: *Environmental Warfare and Ecocide – Facts, Appraisal, and Proposals*. Bulletin of Peace Proposals, Vol. 4. No. 1., 1973. pp. 80–96.

¹⁹⁵ Falk: 1973. p. 21.

¹⁹⁶ Falk: 1973. p. 21.

4.1.2. The role of the International Law Commission in establishing ecocide concept

The International Law Commission (ILC) is responsible for the codification of international law. This body was established in 1947 to support the role of the General Assembly declared in Art. 13 of the Charter of the United Nations.¹⁹⁷ Within the frames of the ILC, several significant international conventions and drafts were accepted, including diplomatic and consular relations, laws of the treaties and states' responsibility for internationally wrongful acts.¹⁹⁸

In 1947, the General Assembly assigned the task to the ILC to collect "*the principles of international law recognized in the charter of the Nuremberg Tribunal and in the judgment of the Tribunal*" and to "*prepare a draft code of offences against the peace and security of mankind, indicating clearly the place to be accorded to the principles.*"¹⁹⁹ Between 1984 and 1996, the International Law Commission was also very active on the issue of crime against the environment. The main goal was to include an environmental crime in the Draft Code of Crimes against the Peace and Security of Mankind, which later became the Statute of the International Criminal Court.²⁰⁰ For a long time, it was included as Article 26 in the draft Convention on Crimes against Peace and Security of Mankind. Article 26. stated: "*an individual who wilfully causes or orders the causing of widespread, long-term and severe damage to the natural environment shall, on conviction thereof, be sentenced.*" In 1986, the debate was about assessing acts that harm the environment and, more specifically, whether they could be considered crimes of intent. However, it is worth noting that it was not the ecocide terminology that was used but the term "*conduct/act causing serious damage to the environment.*"²⁰¹ In 1991, the terminology used in the

¹⁹⁷ Charter of the United Nations, Art. 13. 1(a) "*promoting international co-operation in the political field and encouraging the progressive development of international law and its codification.*"

¹⁹⁸ For more information on the work of the International Law Commission, visit <https://legal.un.org/ilc/>.

¹⁹⁹ Formulation of the principles recognized in the Charter of the Nurnberg Tribunal and in the judgment of the Tribunal. General Assembly resolution 177 (II) of 21 November 1947.

²⁰⁰ Draft Code of Offences against the Peace and Security of Mankind. General Assembly Resolution 42/151 of 7 December 1987.

²⁰¹ Thiam, Doudou: *Second report on the draft code of offences against the peace and security of mankind*. A/CN.4/377 and Corr.1. Yearbook of the International Law Commission, vol. II.(1.) 1984. 96. para 46.

earlier drafts was replaced by the new, shorter definition as the following: “*wilful and severe damage to the environment*”.²⁰²

The debate continued in the first half of the 1990s, and a special working committee was set up in 1995, specifically on Article 26. The results of the working group were summarised in a report published in 1996.²⁰³ In the report, three solutions were proposed: the regulation of environmental crimes as a separate article, the extension of crimes against humanity to include environmental crimes, or their inclusion in war crimes as ecocide.²⁰⁴ Less than a year later, the notion of ecocide as a separate offence disappeared entirely from the draft without the issue even being put to a vote concerning the original content. Practically, the Chairman of the ILC, *Ahmed Mahiou*, unilaterally decided to remove the crime of ecocide completely as a separate provision. From then on, the Commission could only decide whether to classify conduct harmful to the environment as a crime against humanity or a war crime, and the provision was further expanded. The result of this process was the introduction of the phrase “*widespread long-term and severe damage to the natural environment*,” which later found its way into the Rome Statute.²⁰⁵

In the middle of the 1980s, ecocide was also in the spotlight within a “*report on the question of the prevention and punishment of the crime of genocide*” prepared for the Sub-Commission on Prevention of Discrimination and Protection of Minorities. In 1985, UN Special Rapporteur *Benjamin Whitaker* advocated the inclusion of “*ecocide*” into the definition of “*genocide*,” describing it as “*adverse alterations, often irreparable, to the environment*”, whether committed deliberately or with criminal negligence. *Benjamin Whitaker* also recommended further discussion on the matter.²⁰⁶

Between 1970 and 1996, ecocide seemed to be an essential element in the discourse on the most severe internationally punishable offences. Many states advocated the ecocide concept as a separate offence. However,

²⁰² Draft code of crimes against the peace and security of mankind (Part II)- including the draft statute for an international criminal court. A/CN.4/L.459 [and corr.1] and Add.1. Yearbook of the International Law Commission. 1991. Vol.1. 234. para. 58–93.

²⁰³ Tomuschat, Christian: *Document on crimes against the environment*. ILC(XLVIII)/DC/CRD.3. Yearbook of the International Law Commission, Vol.2.(1), 1996. pp. 15–27.

²⁰⁴ Ibid. 21–27.

²⁰⁵ Gauger, Anja et.al.: “*Ecocide is the missing 5th Crime Against Peace*”. Human Rights Consortium, School of Advanced Study, University of London, 2012. pp. 8–11. Available at https://sas-space.sas.ac.uk/4830/1/Ecocide_research_report_19_July_13.pdf

²⁰⁶ UN Economic and Social Council, Sub-Commission on Prevention of Discrimination and Protection of Minorities. Thirty-eighth session. Revised and updated report on the question of the prevention and punishment of the crime of genocide prepared by Mr. B. Whitaker, 1985. E/CN.4/Sub.2/1985/6 para 33.

in the final draft, ecocide was no longer included as the fifth “*crime against peace*.” As we can see, there was an intense debate on the issue of ecocide within the UN bodies between 1984 and 1996, mainly in the ILC and other bodies, even if not as a primary subject of discussion. Nowadays, several states have criminalised environmental destruction in their national legislation. Still, only a handful of states included ecocide in the legislation.

The following table summarises the main cornerstones of ecocide’s history.²⁰⁷

Table 1: Main cornerstones in the history of ecocide

Date (year)	Event/person	Importance
1961-1971	Vietnam War effort	international outcry over excessive levels of environmental degradation and destructive techniques
1970	Conference on War and National Responsibility in Washington	Professor Arthur W. Galston characterised massive damage and destruction of ecosystems as ecocide
1972	United Nations Conference on Human Environment, Stockholm	Speech of Olof Palme (former Swedish prime minister) explicitly mentioning ecocide in relation to the Vietnam War effort
1973	First international treaty proposing ecocide was published in literature (Revue Belge de Droit International)	Richard A. Falk, International Convention on the Crime of Ecocide
1978	UN Sub-Commission on Prevention of Discrimination and Protection of Minorities	The Sub-Commission proposes adding ‘ecocide’ to the Genocide Convention
1984-	International Law Commission started to consider environmental harm as a criminal act in the Draft Code of Crimes Against the Peace and Security of Mankind.	Establish different versions of the environmental crime article without final inclusion.
1985	UN Special Rapporteur on Genocide, Benjamin Whitaker	No significant result is based on the recommendation.

²⁰⁷ Research by the author and data available at Ecocide Law. Available at: <https://ecocidelaw.com/history/>.

Date (year)	Event/person	Importance
1990	Vietnam	The first State to codify ecocide in its domestic law (Article 278 of the Criminal Code).
1991	International Law Commission	Article 26: An individual who willfully causes or orders the causing of widespread, long-term and severe damage to the natural environment shall, on conviction thereof, be sentenced.
1996	International Law Commission	Step-back, as the independent Article disappears from the Draft Code.
2001	Ukraine	Codifies the crime of ecocide in its domestic law (Article 441 of the Criminal Code).
2010	Polly Higgins	Calls for ecocide legislation.
2013	The Prosecutor of the ICC	Policy Paper on Preliminary Examinations stated that environmental damage will be considered in assessing the gravity of Rome Statute crimes.
2016	Prosecutor of the ICC	Policy Paper on Case Selection and Prioritisation: The prosecutor of the ICC will give particular consideration to prosecuting crimes committed by means of or resulting in the destruction of the environment
2019	Vanuatu and the Maldives, 18th Meeting of the ICC Assembly of States Parties	Some Small Island Developing States (SIDS) call for considering adding the crime of 'ecocide' to the Rome Statute.
2020	Belgium, 19th Meeting of the ICC Assembly of States Parties	Calls for consideration of adding the crime of 'ecocide' to the Rome Statute.
2021	Independent Expert Panel, convened by the Stop Ecocide Foundation	Definition of ecocide and Proposed draft of amendment to the Rome Statute to include a crime of 'ecocide.'
2024	European Union	Acceptance of the new Environmental Crime Directive, explicitly referring to ecocide.

4.2. Ecocide as a new concept in law

The title of this subchapter is declarative but can also be phrased as a question: Can ecocide be considered a norm of international law or law at all? It is of immense importance to differentiate between ecocide as an ideological concept and a legal norm.

4.2.1. Shaping new legal norms

Generally, a legal norm is the smallest unit of law that is meaningful in itself, constituting a complete, intelligible, comprehensible, applicable rule of conduct. It is not necessarily formulated in a single paragraph and is, therefore, a logical unit of regulation. A legal norm is constituted by those legal acts which are so closely linked that they cannot be applied without each other and are of limited interpretability since, if any of them is omitted, the legal norm is incomplete, does not express all the essential or logical elements of the norm. The legal source expresses the specific place and role of different pieces of legislation in the legal system. The definitions of law and legal norms usually can be replaced by each other, but there is a theoretical differentiation between the two. Legal norms can appear in different legislations, resulting in problems with understanding, following and applying the given regulation.²⁰⁸ Thus, the relationship between the source of law and the law is the relationship between the source of law and the substantive law, in which the sources of law appear as the generating phenomenon that gives rise to the objective law, the legislation, and the legal norms appear as the result of the source of law. Accordingly, the source of law is the specific social phenomenon, factor or relationship that directly gives rise to the objective law, the set of legal norms.²⁰⁹

How is a new law formulated, and where is it derived from? This question is essential if we would like to understand the nature of ecocide legislation. Public international law has unique sources and procedures for how new legal norms or legislations are formulated and these differ from domestic legislative procedures. However, the generic view that law follows societal needs also applies to international law. The rules of behaviour or norms that determine social coexistence can come from

²⁰⁸ Szilágyi, Péter: *Jogi alaptan [Legal Doctrine]*. Osiris Publishing, Budapest, 2006. pp. 228–233.

²⁰⁹ Peschka, Vilmos: *Jogforrás és jogalkotás [Source of law and creation of law]*. Akadémiai Publishing, Budapest 1965. p. 52.

two sources. Individual acts, such as administrative decisions and court rulings, contain a decision on a past event that has already taken place. On the other hand, general acts prescribe the conduct to be followed in the case of future events. What distinguishes law from other social norms such as morality, religion, or tradition is that the legislator guarantees their enforcement, that there are rules of conduct to be followed in general and that specific penalties accompany them. The concept of sources of law is interpreted differently in each branch of law, and the definition of substantive law is therefore different. By material source of law, we mean the phenomenon or social claim that has given rise to the law. The substantive law is the form in which the law is expressed, i.e. the law itself.²¹⁰

International law reacts to the necessities of the international community, primarily the states, but also has a unique character that addresses the applicable legal norms. This is the reason why international law can be seen as a voluntary commitment of states and other groups of individuals. This character of international law only overstepped in the case of cogens norms (*ius cogens*) and under specific circumstances.²¹¹ In the last few decades, there has been an expansion of international law. International law has evolved in parallel with international relations, and developments in the modern era have required a rethinking of the rules of international law. However, integrating changes and new provisions is not an easy task, and the adoption of an international treaty is often preceded by a long period of discussion. The increase in the range of subjects covered by international law is partly due to the issues raised but equally to the growth of the international community. Among the classic areas of international law are the law of peace and war and the law of diplomatic and consular relations. However, modern relations and achievements have created a need for international regulation in new areas, such as space law, settling areas with special legal status and protecting nature and the environment. Furthermore, the second half of the 20th century saw the expansion of international criminal law, humanitarian law, human rights and the protection of minorities.²¹²

²¹⁰ Trócsányi, László – Schanda, Balázs: *Bevezetés az alkotmányjogba; Az Alaptörvény és Magyarország alkotmányos intézményei* [Introduction to constitutional law. The Fundamental Law and the constitutional institutions of Hungary]. HVG Orac Publishing, Budapest, 2014.

²¹¹ Nagy Károly: *Nemzetköz jog* [International law]. Püski Publishing, Budapest, 1999. pp. 8–19.

²¹² Shaw, Malcolm M.: *Nemzetközi jog* [International law]. Hungarian Edition. Complex Publishing, Budapest, 2008. pp. 57–64.

International law is very different from domestic law, which is reflected in the sources, too. In the case of international law, there is no single catalogue of sources. Nonetheless, Article 38 of the Statute of the International Court of Justice guides what can be considered sources of international law in the scope of decisions. The classical sources of international law are international treaties, customary law (international customs) and general principles of law recognised by civilised nations. Unilateral declarations by states – exceptionally – can also be included. Judicial decisions and the teachings of scholars are additional sources, mainly to help with interpretation. Other sources include decisions of international organisations and international soft law.²¹³ Based on Samu, “three basic forms of law formation can be identified: the emergence and development of customary law, the crystallisation of legal customs and the activity of the competent bodies in summarising customary law and legal customs, and the creation of new laws by conscious legislation.”²¹⁴ I considered it important to include this quote because, in international law, international customs are significant, often providing the basis for international treaties. In international law, there is no classical hierarchy of sources of law, so international treaties and customary law can be considered equivalent sources of law. As a result, customary law that develops later may even “supersede” the international treaty, the unwritten source of law replacing the written law.²¹⁵ This specificity of international law is broken only by rules of a cogent and unconditional application, which must be respected by all states and can be changed only by rules of international law, which are accepted as such.

In international environmental law, the individual sources of law have different emphasis and importance. The principles of customary law, and thus of international environmental law, are of particular importance since, for a long time, there were no generally accepted international treaties to serve as reference. These principles have often appeared in *soft law* documents and court decisions. Furthermore, non-binding final instruments of conferences, programmes and documents are of particular importance,

²¹³ Kardos, Gábor – Lattmann, Tamás (Eds.): *Nemzetközi jog* [International law]. ELTE Eötvös Publishing, Budapest, 2013. p. 50.

²¹⁴ Samu, Mihály: *Allam- és jogelmélet II.* [Theory of state and law II.]. Tankönyvkiadó, Budapest, 1990. p. 128.

²¹⁵ See Merkouris P. – Kammerhofer J. – Arajärvi N. (Eds): Customary International Law as a Source of International Law: Doctrine and History. In: *The Theory, Practice, and Interpretation of Customary International Law. The Rules of Interpretation of Customary International Law*. Cambridge University Press, Cambridge, 2022, pp. 103–228. DOI: <https://doi.org/10.1017/9781009025416>.

some of the principles contained in them being confirmed by the practice of states and existing as customary law norms. In the first half of the twentieth century, the acceptance of international conventions came to the fore, both at regional and universal levels. International treaties on international environmental law have thus been signed in an increasing number of sectoral fields and on general environmental issues.

The term “*soft law*” is used in various senses in international law.²¹⁶ First of all, soft law can be understood as not binding law. Secondly, soft law can also mean “*less binding*” rules, where the precise content of a rule that would otherwise be law has not yet been established, or where there is doubt as to whom it should be applied, or even where both criteria are combined. László Buza calls the non-international law of a non-exhaustive nature “*programme norms*”, which will, in time, become full-fledged rules. However, the legislation is still in its initial phase, and the concrete rules will be built on the “*skeleton*” later.²¹⁷ One of the most common elements of intergovernmental cooperation on environmental issues has been adopting a wide range of non-binding documents. In the framework of several international organisations and across almost all environmental problems, states are adopting soft law sources. The number of non-binding instruments is increasing, as well as their role and functions. Non-binding instruments can no longer be seen as a precursor to international treaty-making or customary law, and their content goes far beyond the declaration of general principles of intergovernmental cooperation. They can take various forms, such as resolutions, statements, directives, guidelines, and action plans, which set out concrete measures and practices to be followed by States and civil society. Furthermore, since some of the soft law instruments are drawn up within the framework of international organisations, they establish many mechanisms for monitoring and controlling the implementation of action plans which are otherwise adopted in non-binding form. This makes it practically irrelevant that the instrument in question has been adopted as soft law.²¹⁸

²¹⁶ In details, see Chapter 1.

²¹⁷ See Buza László: *A törvényesség és az igazságosság elve a nemzetközi jogban* [The principles of legality and justice in international law]. Acta Universitatis Szegediensis: acta juridica et politica. Vol. 3. No. 1, 1957. pp. 1–55.

²¹⁸ Friedrich (2013): pp. 1–8.

4.2.2. Terminology

The following will analyse the most important definitional elements of ecocide, collecting the existing concepts from literature and law. The concept of ecocide is surrounded by uncertainty, as there is no universally agreed definition or consensus on the elements. The English word “*ecocide*” is a compound of two terms: “*eco*” (oikos, Greek), meaning ecosystem and “*cide*” (caedere, Latin), which means destruction. In the most general sense, ecocide is understood as the large-scale destruction of the environment. In the simplest terms, ecocide is severe environmental damage that causes or is likely to cause serious, widespread or long-term damage to the environment and is punishable under international or national law. With regard to the subjective aspect of the offence, expert opinions are divided as to whether only intentional or even reckless acts are punishable. The environment should be interpreted as broadly as possible, including the terrestrial, aquatic, marine, underground and atmospheric environment.

4.2.3. Definitions by literature

In an excellent study published in 1974, László Bodnár, professor of international law at Szeged, defined the phenomenon of ecocide as follows:

*“the crime of ecocide is committed by a state which intentionally damages or destroys the human environment to such an extent that it may lead to the disruption of the ecological balance outside the territory of its own state.”*²¹⁹

Professor Bodnár’s insights are particularly forward-looking because, in the 1970s, the concept of ecocide was still in its infancy, and most countries were sceptical about the rise of environmental issues. The 1974 definition of ecocide can still be accepted today, although the development of ecological thinking in recent decades has broadened the scope of the defining elements in some respects.

In 1985, at the discussion of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, some representatives

²¹⁹ The definition is the following in Hungarian (original language): “*ekocídium deliktumát követi el az az állam, amely az emberi környezetet szándékosan, olyan mértékben megrongálja vagy pusztítja, hogy az saját államának területén kívül az ökológiai egyensúly megbontására vezethet*”. In: Bodnár László: *Az „ekocídium” kérdéséről* [About the issue of ecocide]. Jogtudományi Közlöny, Vol. XXIX. 1974. p. 239.

recommended that the definition of genocide should be broadened to include cultural genocide or “*ethnocide*” and also “*ecocide*” as the following:

*“adverse alterations, often irreparable, to the environment – for example through nuclear explosions, chemical weapons, serious pollution and acid rain, or destruction of the rain forest – which threaten the existence of entire populations, whether deliberately or with criminal negligence.”*²²⁰

The negotiation at the Sub-Commission also reflected the opinion that ecocide or ethnocide is a crime against humanity and not genocide.²²¹

In 1996, Mark Allan Gray published a lengthy article²²² on ecocide, including a definition established within the paper’s scope.

*“[...] states, and arguably individuals and organizations, causing or permitting harm to the natural environment on a massive scale breach a duty of care owed to humanity in general and therefore commit an international delict, “ecocide.” The Article then examines the extent to which ecocide could be considered an international crime. Ecocide is identified on the basis of the deliberate or negligent violation of key state and human rights and according to the following criteria: (1) serious, and extensive or lasting, ecological damage, (2) international consequences, and (3) waste.”*²²³

Ecocide was long absent from the international community’s agenda until the 2000s. In 2010, Scottish international lawyer Polly Higgins, founder of the STOP Ecocide Foundation, submitted a proposal to the UN for integrating ecocide into the Rome Statute. The proposal contained the following definition:

*“Ecocide is the extensive damage to, destruction of or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been severely diminished.”*²²⁴

²²⁰ E/CN.4/Sub.2/1985/6 para 33.

²²¹ Ibid.

²²² Gray, Mark Allan: The International Crime of Ecocide. California Western International Law Journal, Vol. 26. No. 2. 1996. pp. 215–271. Available at: <https://scholarlycommons.law.cwsl.edu/cwilj/vol26/iss2/3>.

²²³ Gray:1996. p. 216.

²²⁴ Higgins, Polly: Eradicating Ecocide, Laws and Governance to Stop the Destruction of the Planet. 2nd Edition, Shephard-Walwyn, London, 2016. pp. 62–63.

In the following, the UCLA Promise Institute's definition of ecocide is cited. The Promise Institute Working Group on the Use of International Criminal Law to Protect the Environment was established in 2020 and served as an essential basis for the work of the Independent Expert Panel that established the legal definition of ecocide.²²⁵

"1. For the purpose of this Statute, 'ecocide' means any of the following acts, committed with the knowledge that they are likely to cause widespread, long-term and severe damage to the natural environment:

- a. [Substantial] destruction or despoliation of natural habitats, ecosystems or natural heritage;*
- b. Destruction or despoliation of biological resources, in a manner likely to have adverse effects on biological diversity;*
- c. Introducing harmful quantities of substances or energy into the air, water or soil;*
- d. Illegal traffic in hazardous waste;*
- e. Production, import, export, sale or use of ozone-depleting substances or of persistent organic pollutants;*
- f. Killing, destruction, or taking of specimens of protected wild fauna or flora species, on a scale likely to impact the survival of the species;*
- g. Significantly contributing to dangerous anthropogenic interference with the climate system, including through large-scale emissions of greenhouse gases or destruction of sinks and reservoirs of greenhouse gases;*
- h. Any other acts of a similar character likely to cause an ecological disaster.*

2. For the purpose of paragraph 1, conduct is not ecocide if it is:

- a. lawful under national law;*
- b. lawful under international law; and*
- c. employs appropriate available measures to prevent, mitigate and abate harms.*

3. For the purpose of paragraph 1:

- a. 'Widespread' means having effects that extend beyond a limited geographic area, cross-state boundaries, or adversely affect a large number of human beings;*

²²⁵ UCLA Law. Available at: <https://law.ucla.edu/academics/centers/promise-institute-europe/ecocide>.

- b. *'Long-term' means lasting for at least a decade;*
- c. *'Severe' means involving serious or significant disruption or harm to ecosystems, human life, natural and economic resources or other assets.*
- d. *The terms in paragraphs (a) to (h) shall be interpreted in accordance with international law, particularly international environmental law."*

In my view, the ecocide concepts cited above are certainly acceptable in the present context, but they can be extended in light of the new directions of environmental law. From the point of view of international law, the destruction of the environment by natural disasters cannot be considered relevant, but it is worth reflecting on a hypothetical case. Suppose we accept the notion that some environmental disasters are caused, for example, by climate change or by human activity. Does this make an act of environmental destruction that is indirectly caused by this phenomenon? In the case of sea-level rise caused by climate change, the disappearance of some island states is caused, at least indirectly, by the actions of man and of states. Our hypothetical case is more theoretical than realistic but, in my view, we should expect that actions which may bring about ecocide will expand.

4.2.4. Definitions by law

Shaping the definition of ecocide at law started with the proposed Ecocide Convention by *Richard Falk*. The proposal stands in between law and literature since it was a legal proposal in the form of academic publishing. The proposal of 1973 provided a lengthy definition of ecocide as the following:

"In the present Convention, ecocide means any of the following acts committed with intent to disrupt or destroy, in whole or in part, a human ecosystem:

- a) *The use of weapons of mass destruction, whether nuclear, bacteriological, chemical, or other;*
- b) *The use of chemical herbicides to defoliate and deforest natural forests for military purposes;*
- c) *The use of bombs and artillery in such quantity, density, or size as to impair the quality of soil or the enhance the prospect of diseases dangerous to human beings, animals, or crops;*
- d) *The use of bulldozing equipment to destroy large tracts of forest or cropland for military purposes;*

- e) *The use of techniques designed to increase or decrease rainfall or otherwise modify weather as a weapon of war;*
- f) *The forcible removal of human beings or animals from their habitual places of habitation to expedite the pursuit of military or industrial objectives.*²²⁶

The definition of ecocide, which was established by an independent panel of experts, is undoubtedly a milestone in the history of the concept. The Independent Expert Panel for the Legal Definition of Ecocide relied on world-renowned experts, lawyers, professors and environmental activists. They propose three amendments to the Rome Statute. In the preambular paragraphs, Article 5 defines the subject-matter jurisdiction of the ICC with the crime of ecocide, and Article 8 integrates the crime of ecocide. The panel defined ecocide as follows.

“Article 8: Ecocide

1. *For the purpose of this Statute, “ecocide” means unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.*
2. *For the purpose of paragraph 1:*
 - a. *“Wanton” means with reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated;*
 - b. *“Severe” means damage which involves very serious adverse changes, disruption or harm to any element of the environment, including grave impacts on human life or natural, cultural or economic resources;*
 - c. *“Widespread” means damage which extends beyond a limited geographic area, crosses state boundaries, or is suffered by an entire ecosystem or species or a large number of human beings;*
 - d. *“Long-term” means damage which is irreversible or which cannot be redressed through natural recovery within a reasonable period of time;*
 - e. *“Environment” means the earth, its biosphere, cryosphere, lithosphere, hydrosphere and atmosphere, as well as outer space.*²²⁷

²²⁶ Falk:1973. p. 21.

²²⁷ Independent Expert Panel for the Legal Definition of Ecocide, Commentary and core text. June 2021. Available at <https://www.stopecocide.earth/legal-definition>. p. 5.

4.2.5. The evaluation of the legal definition of ecocide

The “official” definition of ecocide, which was established in 2021 by the Independent Expert Panel, has provoked an almost immediate reaction from international lawyers. However, opinions are divided on the definition, ranging from intensely sceptical²²⁸ to positive ones, with academic literature detailing the elements of the definition as formulated by the independent expert panel. Based on objective opinion, some scholars see the concept as a fundamentally positive achievement, but recognise its shortcomings and the limits of the potential for ecocide legislation.²²⁹ In particular, two conceptual elements have triggered a strong reaction. The first is the perspective highlighting the link between human interests and environmental considerations, and the second is the mental dimension of responsibility for ecocide, which may constitute an obstacle to the international criminal law protection of a high level of environmental protection.²³⁰

An important starting point is that the definition of ecocide is essentially based on the Rome Statute, Article 8(2)(b)(iv), which is a subtype of war crime in the document in force. The newly proposed amendment would allow liability for peacetime environmental damage to be established. At the same time, the proposed definition requires a “*cost-benefit analysis*”, meaning that the correlation between the result achieved and the risk/damage caused must be examined case-by-case. On this point, I agree with the position taken in *Minkova’s* relevant study. In the opinion of the author cited, the analysis integrated into the concept separates the issue of human well-being and the well-being and state of the environment, which may negatively affect the strength and enforcement of existing international criminal law.²³¹

Based on his intensive critique of the ecocide definition, *Heller* provided two alternative ecocide definitions. The first definition eliminates the anthropogenic element altogether: “*For the purpose of this Statute, “ecocide” means acts committed with the awareness that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being*

²²⁸ See Heller, Kevin John: *Skeptical Thoughts on the Proposed Crime of “Ecocide” (That Isn’t)*. 23 June 2021. Available at: <https://opiniojuris.org/2021/06/23/skeptical-thoughts-on-the-proposed-crime-of-ecocide-that-isnt/>.

²²⁹ See Minkova, Liana Georgieva: *The Fifth International Crime: Reflections on the Definition of “Ecocide”*. Journal of Genocide Research, Vol. 25., No. 1. pp. 62–83. DOI: 10.1080/14623528.2021.1964688.

²³⁰ Minkova (2023) p. 62.

²³¹ Minkova (2023) p. 71.

caused by those acts.” The second replaces “wanton recklessness with pure negligence regarding the cost/benefit analysis” as follows:

*“For the purpose of this Statute, “ecocide” means acts committed with awareness that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts, where a reasonable person would know that the expected environmental damage would be clearly excessive in relation to the social and economic benefits anticipated.”*²³²

For a long time, only a handful of states regulated ecocide as a separate crime. In recent years, a growing number of countries have started to become interested in ecocide legislation. The Stop Ecocide Foundation offers assistance to these states upon request. Recently, Peru’s Justice Commission accepted the notion of ecocide as “a person knowingly provokes, commits or omits acts that cause severe damage that is widespread or irreversible to the environment or its components, to environmental quality or health, or to the integrity of ecological processes.”²³³ The new law that would be incorporated as article 305-A into the Penal Code still has to be approved by the Congress and later promulgated by the President of Peru.

The following table summarises the already accepted ecocide legislation based on the collection of the “*Ecocide Law*.” Following the implementation of the new Environmental Crime Directive, the list of ecocide-legislating states is expected to grow internationally and within the European Union.²³⁴

²³² Gray (2021): Ibid.

²³³ Peru: *Ecocide law approved by Justice Commission*. Available at <https://www.stopecocide.earth/2024/peru-ecocide-law-approved-by-justice-commission>.

²³⁴ The table does not include EU member states, as ecocide legislation in force and proposed ecocide laws are analysed in the relevant chapter of this book.

Table 2: Ecocide legislation in force

State	Ecocide regulation (definition)	Legislative Act
Armenia	Mass destruction of flora or fauna, poisoning the environment, the soils or water resources, as well as implementation of other actions causing an ecological catastrophe, is punished with imprisonment for the term of ten to fifteen years.	Article 394
Belarus	Intentional mass destruction of flora or fauna, or poisoning of atmospheric air or water resources, or committing other deliberate actions capable of causing an ecological disaster (ecocide) -are punished with imprisonment for a term of ten to fifteen years.	Article 131
Chile	regulated as attacks against the environment, extensively modified in 2023	Penal Code
Ecuador	crimes against the environment and nature or Pacha Mama and crimes against biodiversity	Penal Code Article 245
Georgia	Ecocide i.e. contamination of the atmosphere, soil, water resources, mass destruction of fauna or flora, or any other act that could have led to an ecological disaster, – shall be punished by imprisonment for a term of twelve to twenty years. The same act committed during armed conflicts, – shall be punished by imprisonment for a term of fourteen to twenty years or with life imprisonment.	Article 409
Kazakhstan	Mass destruction of flora or fauna, poisoning the atmosphere, land or water resources, as well as the commission of other acts which caused or a [sic] capable of causation of an ecological catastrophe, – shall be punished by imprisonment for a period from ten to fifteen years.	Article 161
Kyrgyz Republic	Massive destruction of the animal or plant kingdoms, contamination of the atmosphere or water resources, and also commission of other actions capable of causing an ecological catastrophe, shall be punishable by deprivation of liberty for a term of twelve to twenty years.	Article 374

State	Ecocide regulation (definition)	Legislative Act
Moldova	Deliberate mass destruction of flora and fauna, poisoning the atmosphere or water resources, and the commission of other acts that may cause or caused an ecological disaster shall be punished by imprisonment for ten to fifteen years.	Article 136
Ukraine	Mass destruction of flora and fauna, poisoning of air or water resources, and also any other actions that may cause an environmental disaster, – shall be punishable by imprisonment for a term of eight to fifteen years.	Article 441
Uzbekistan	Article 196. “pollution or damage of land, water, or atmospheric air, resulted in mass disease incidence of people, death of animals, birds, or fish, or other grave consequences” Article 198 “damage or destruction of crops, forest, or other plants as the result of negligent dealing with fire, resulted in large damage or other grave consequences” [...] “illegal felling of timber or other plants, resulted in large damage” [...] “intentional damage or destruction of crops, forest, or other plants, resulted in large damage.”	Section 4 of the Criminal Code details serious environmental offences in Articles 196 and 198
Russia	Massive destruction of the animal or plant kingdoms, contamination of the atmosphere or water resources, and also commission of other actions capable of causing an ecological catastrophe, shall be punishable by deprivation of liberty for a term of twelve to twenty years.	Article 358.
Tajikistan	Mass destruction of flora and fauna, poisoning the atmosphere or water resources, as well as commitment of other actions which may cause ecological disasters is punishable by imprisonment for a period of fifteen to twenty years.	Article 400
Vietnam	“ecocide, destroying the natural environment”, as a crime against humanity committed in times of peace or war	Penal Code of 1990, Article 278

CHAPTER 5.

ECOCIDE AS AN ENVIRONMENTAL CRIME AND THE RELEVANCE OF INTERNATIONAL CRIMINAL LAW

“[...] We can always do more. We can always do better. And we should not rest as long as there is one perpetrator that did not answer for his crimes, or a victim whose suffering was not heard. Justice must prevail.”²³⁵

There is extensive literature on the topic of the inclusion of ecocide in international criminal law. However, there are far fewer articles to be found concerning the relationship between ecocide and international environmental crimes. In this chapter, I want to concentrate on ecocide as a crime, a new method to hold the perpetrators of the most severe environmental crimes responsible. While recognising that ecocide is indeed an important rationale for extending criminal liability, there are increasing attempts to apply the emerging ecocide regime to other environmental problems. This includes putting an end to the loss of biodiversity and illegal trafficking in endangered species (wildlife crime), as well as other crimes previously classified as environmental crimes (such as transnational environmental crimes). In addition, the international criminal law aspects are analysed, including the protection of the environment at times of armed conflict, as the history of ecocide closely relates to the Vietnam War effort.

²³⁵ Speech of Judge Sang-Hyun Song President of the International Criminal Court, Presidential Palace, Bogotá, Colombia 17 May 2011. In: Remarks at Ceremony on the Occasion of the Signature of the Agreement on the Enforcement of Sentences between the Republic of Colombia and the ICC. Available at: <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/7A084556-59DA-4790-876C-30ACC52BB3DF/283321/110517ColombiaAgreementSentencesSigningCeremony.pdf> p. 3.

5.1. Remarks on the terminology of international criminal offences

International crimes are “*the most serious crimes of concern to the international community as a whole.*”²³⁶ International criminal law has several conceptual definitions in literature. The broadest definition of international criminal law covers criminal offences with cross-border relevance, while a narrower definition concerns the area of regulation where cooperation with other states is necessary. Other scholars include only those international treaties that assign state parties to punish certain activities. The most widely accepted definition of international criminal law refers to international crimes in which the definition of the crimes and the obligation to hold the perpetrators responsible derive directly from customary international law. As a result, individual criminal responsibility derives from international law in the absence of state acts.²³⁷

Transnational crimes, such as terrorism, human trafficking and piracy, have to be differentiated from international crimes. Transnational crimes are cross-border criminal offences, a criminological term where the obligation to penalise these activities is derived from international instruments. Transnational criminal activities can be classified into three categories. Firstly, those that include the provision of illicit goods, such as drug trafficking, trafficking in stolen property, weapons trafficking, and counterfeiting. The second group concerns illicit services, including human trafficking. Lastly, the infiltration of business and government can also be transnational in nature, such as fraud, racketeering, money laundering and corruption, as they are able to affect multiple countries.²³⁸

5.2. The definition of environmental crime

In my view, society has always viewed environmental damage with complacency. All human activities, especially those that fill the basic social needs, involve, at the very least, the alteration of the natural environment. The question is where the moral boundary lies, which must be reflected

²³⁶ Rome Statute of the International Criminal Court 1998 (2002) UNTS Vol. 2187, p. 3. Preamble, point 1.

²³⁷ Kende – Sonnevend – Valki (2019): p. 570.

²³⁸ Albanese, Jay S.: *Transnational crime*. Oxford Bibliographies, 14 December 2009. Available at: <https://www.oxfordbibliographies.com/display/document/obo-9780195396607/obo-9780195396607-0024.xml> DOI: 10.1093/obo/9780195396607-0024

in legislation, including the imposition of penalties. The concept of environmental crime shows similarities between some of the offences covered by national criminal law, at least regarding the protected legal subject. However, attempts to provide for the criminal law protection of the environment have not yet achieved the hopes and expectations invested in them. So, it is not surprising that the supporters of ecocide also see the momentum to establish legal frameworks for effective law enforcement in cases of serious environmental harm.

Environmental crime is not a new term in the international sphere. Also, the meaning of the terminology is uncertain since it can be considered an umbrella term, including all activities with an adverse ecological effect. Environmental crime is a generic term that covers any unlawful activity damaging the environment resulting from the exploitation, damage, trade, or embezzlement of environmental resources for the benefit of an individual or group.²³⁹ Most definitions of environmental crime also consider it serious and reflect the transnational organised crime element. The recognition of the transnational element in environmental crimes resulted in the establishment of a new term, transnational environmental crime.

Transnational environmental crime has emerged in the literature recently and has also appeared in public policy.²⁴⁰ There is no universally accepted definition for transnational environmental crime in international law, so only the relevant instruments provide a basis for argumentation. Transnational environmental crime can be defined as “*cross-border trading of species, resources, waste or pollutants in violation of prohibitions or regulatory regimes established by multilateral environmental agreements, or in contravention of national laws.*”²⁴¹ It also “*involves the movement across borders of species, resources, and pollutants in contravention of domestic law or in violation of prohibition or regulation regimes established by multilateral environmental agreements.*”²⁴² Transnational environmental crime refers to criminal natural-resource-related activities that cross national borders and harm the environment, including illicit wildlife trafficking, illegal fishing, electronic-waste dumping, water theft, illicit markets in ozone-depleting

²³⁹ Authors' own.

²⁴⁰ Elliott, Lorraine (Ed.) *Transnational environmental crime in the Asia Pacific: an 'un(der) securitized' security problem?* The Pacific Review, Vol. 20, No. 4, pp. 501–503. DOI: <http://dx.doi.org/10.1080/09512740701671995>.

²⁴¹ Elliott, Lorraine – Schaedla, William H.: Transnational environmental crime: excavating the complexities – an introduction. In: Elliott, Lorraine – Schaedla, William H. (Eds.): *Handbook of Transnational Environmental Crime*, Routledge, 2016, p. 3. <https://doi.org/10.4337/9781783476237.00009>.

²⁴² Elliott, Lorraine: *Fighting transnational environmental crime*. Journal of International Affairs, Fall/ Winter 2012, Vol. 66, No. 1, pp. 88.

substances, illegal logging and mining. The adverse effects of transnational environmental crime are well-known. Firstly, it can lead to environmental and health insecurity, and illegal trafficking facilitates the spread of zoonotic pathogens. Transnational environmental crime often occurs in low-income countries and conflict zones, boosting poverty and adversely affecting the implementation of sustainable development goals. The ecological and social outcomes, such as economic dislocation and the loss of developing opportunities, are devastating to already marginalised communities.²⁴³

Transnational environmental crime is one of the most rapidly growing sources of illicit revenue, the exact size of which is difficult to estimate due to the lack of data. Environmental crime, in general, is one of the most lucrative businesses in the world, estimated at an annual value between US\$110 billion and US\$281 billion.²⁴⁴ Environmental crime poses a significant threat to the sustainable exploitation of environmental resources and to the implementation of efforts to protect the environment and biodiversity. The corruption and organised crime that often accompanies environmental crime pose additional challenges to state law enforcement agencies, good governance and the rule of law.

The relevant international organisations dealing with environmental crimes also define the forms of offences and the results of the acts that characterise crimes against the environment.²⁴⁵ For example, Europol defines environmental crimes as all activities that violate environmental legislation and cause significant damage or risk to the environment and/or human health. These activities include, but are not limited to: “*improper collection, transport, recovery or disposal of waste; illegal operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored; killing, destruction, possession or trade of protected wild animal or plant species; production, importation, exportation, marketing or use of ozone-depleting substances.*”²⁴⁶ The Interpol’s Environmental Crime

²⁴³ Gore, Meredith L. at al.: *Transnational environmental crime threatens sustainable development*. Nature Sustainability, Vol. 2, September 2019. pp. 784–786.

²⁴⁴ See Amehauser, Kristina – Catwrights, Robin: *Hidden in Plain Sight, Counting the Cost of Environmental Crime*. Global Initiative Against Transnational Organized Crime, 2023. Available at: <https://globalinitiative.net/wp-content/uploads/2023/11/Kristina-Amerhauser-Robin-Cartwright-Hidden-in-plain-sight-Counting-the-cost-of-environmental-crime-GI-TOC-October-2023.pdf>.

²⁴⁵ With special regard to the UNEP and UNODC, as well as the NGO sector, with particular reference to TRAFFIC.

²⁴⁶ Europol: *Environmental Crime*. Available at: <https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/environmental-crime>.

Programme focuses on three main areas: biodiversity, natural resources and environmental quality.²⁴⁷

The concept of environmental crime is not new. Still, it carries considerable uncertainty, as it is usually linked to acts that are otherwise lawful and authorised if carried out in accordance with the law. Moreover, within the limits permitted, environmental damage can be considered lawful, such as the operation of a coal-fired power plant in compliance with the regulations. For environmental crimes, illegality is usually the result of serious harm. As a result, the trend towards “*green criminology*” is beginning to spread, which examines the background of environmental crime in a complex way and from an environmental perspective.²⁴⁸ The category of environmental crime is a complex and controversial concept. It is often used as a catch-all term for crimes affecting biodiversity, wildlife, animals, natural resources, hazardous waste, prohibited substances and environmental quality. In several cases, a specific classification of environmental crimes is used, distinguishing between “*brown*” (e.g. pollution, air quality), “*green*” (e.g. wildlife and conservation efforts) and “*white*” (scientific activities and new technologies, genetically modified organisms) offences. As referred to earlier, organisations that are also active in the environmental field develop their interpretation of the definition of environmental crime.²⁴⁹ To summarise, environmental crime is any unlawful exploitation, trade, use, or benefit from natural resources in violation of national or international regulatory requirements. These acts are often cross-border and may be linked to other offences, including several forms of organised crime and corruption.

Based on the classification of relevant organisations,²⁵⁰ environmental crimes include illegal, unreported and unregulated fishing; illegal mining and trade in minerals, including diamonds; illegal logging and deforestation (forest crime); illegal trade in wildlife products and poaching (wildlife crime); illegal dumping and trade in hazardous and toxic substances; illegally produced charcoal from the timber trade; illegal trade in ozone-

²⁴⁷ Interpol: *Environmental Crime*. Available at: <https://www.interpol.int/Crimes/Environmental-crime>.

²⁴⁸ White, Rob – Heckenberg, Diana: *Green Criminology: An Introduction to the Study of Environmental Harm*. Routledge, New York, 2014. pp. 9–24.

²⁴⁹ Gibbs, Carole – Boratto, Rachel: *Environmental Crime*. Oxford Research Encyclopedia of Criminology. 29 March 2017. Available at: <https://oxfordre.com/criminology/view/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-269> p. 2. DOI: <https://doi.org/10.1093/acrefore/9780190264079.013.269>

²⁵⁰ Such as Europol and Interpol.

depleting substances.²⁵¹ Ecocide includes all illegal acts that harm the natural environment and are against legal standards. As a result, ecocide falls within the scope of environmental crime. Establishing a universally agreed definition of wildlife crime is difficult, as each state has national legislation to protect the fauna and flora native to its territory. Wildlife crime often includes the element of corruption, and they are transnational in nature. For other forms of organised crime, such as drug and firearms trafficking, trafficking in humans and smuggling, international regulatory instruments can be found. However, there is no uniform agreement on the definition of wildlife crime. To define wildlife crime, it is necessary to examine the relevant international conventions and the activities and programmes of international organisations working in the field.

5.2.1. Ecocide and wildlife crime

While many acts that harm wildlife remain within the territory of individual states, including poaching, the rise of organised criminal groups in environmental crime is posing new challenges to law enforcement agencies. The illegal wildlife trade ensures that wildlife products and specimens, often also obtained illegally, reach the final buyer. It is, therefore, essential to identify the link between cross-border organised crime and wildlife crime, in particular illegal trade, and to assess the relevant international instruments. Wildlife crime should be understood as any act that harms wildlife and is subject to an adverse legal consequence under national legislation. The latter acts may appear as gathering or taking from the wild, acquiring, possessing or processing wildlife species and/or products. As part of my earlier research, I have already defined wildlife crime as the following.

“Wildlife crime includes illegal wildlife trade, importation into or exportation from the territory of a State by breaching the relevant regulations. Wildlife includes all species of wild fauna and flora, including all forms of their occurrence and coexistence. Wildlife crime is based on the application of

²⁵¹ Nellemann, Christian (Ed.): *The Rise of Environmental Crime – A Growing Threat to Natural Resources Peace, Development And Security. A UNEP INTERPOL Rapid Response Assessment*. UNEP, 2016. p. 31. Available at: https://wedocs.unep.org/bitstream/handle/20.500.11822/7662/the_rise_of_environmental_crime_A_growing_threat_to_natural_resources_peace_development_and_security2016environmental_crimes.pdf.pdf?sequence=3&isAllowed=y

*criminal law under national legislation. Their characteristics include a transnational organised crime element and a propensity to corruption.*²⁵²

Wildlife crime poses a threat to states, particularly burdening enforcement agencies. The exploitation of natural resources generates significant state revenue. Several developing states' wealth relies on natural resources, such as minerals and precious metals, and these resources generate the main economic income. But, due to illegal mining, these are not exploited for the country's development programmes. Unfortunately, the members of customs and enforcement agencies are prone to corruption, so legal standards are not implemented and enforced. Therefore, the actual scale of illegal trade is difficult to estimate. The illegal exploitation of natural resources makes future development opportunities impossible to realise. Global biodiversity loss seems to be unstoppable, and a significant proportion of species face the possibility of extinction. Wildlife crime, including illegal trade, is often hidden under legitimate trade and with the infiltration of transnational organised crime, additional risks have emerged for states, such as the negative impacts of wildlife crime. It is proved that organised criminal groups use the proceeds of wildlife crime to finance additional activities that are dangerous to the country's security, including terrorism. In addition, organised criminal groups have established networks that easily allow the smuggling and transcontinental transport of wildlife specimens or products.²⁵³ Organised crime groups involve locals and hunters to poach animals. Poachers often have access to better weapons and resources than the state armed forces. Smuggling activities involving the mixed transport of certain illegal products – for example, weapons, drugs and wildlife species/products – are becoming increasingly common. Due to the characteristics of the act, it is challenging to estimate the accurate scale of illegal wildlife crime.²⁵⁴

If we look at the acts that damage the environment, the natural environment and wildlife, only the most serious cases are criminalised. The range of international conventions – and CITES is no exception – only provide for the application of adverse legal consequences in most cases. However, where crimes against the environment and crimes against

²⁵² Sziebig, Orsolya Johanna: *Vadvilág végrveszélyben, A vadvilággal kapcsolatos büntetendő cselekmények nemzetközi és uniós jogi vonatkozásai* [Wildlife at risk, International and EU legal aspects of wildlife crime]. Iurisperitus, Szeged, 2021, p. 43.

²⁵³ See Zsigmond, Csaba: *Bűnszervezetek a nemzetközi illegális állat- és növénykereskedelemben* [Criminal Organisations Involved in the International Illegal Trade in Animals and Plants] Magyar Rendészet, Vol. 22, No. 1, 2022, pp. 195–223.

²⁵⁴ Sziebig (2021): pp. 46–51.

wildlife are actually involved, there are also sanctions of an *ultima ratio* nature, such as imprisonment or even the death penalty. The range of adverse sanctions under national criminal law is, therefore, also varied, ranging from fines to imprisonment. However, some states are trying to curb the rise in poaching by imposing increasingly severe penalties. For example, Kenya's Minister of Wildlife and Tourism announced that poaching is included among the most serious crimes and that the perpetrator is punishable by death. Sanctions for acts that harm the environment include legal consequences of various kinds, whether civil, administrative or criminal. Obviously, the most severe sanctions will only be applied as a last resort in the case of criminalisation. It is also possible that the consequences of the different legal disciplines will be applied in parallel, for example, particularly serious pollution may entail parallel proceedings in the administrative and criminal justice systems.

According to *Ilona Görgényi*, there is a place for criminal, civil and administrative law approaches in the approach to crimes against the environment, which are not sufficient on their own and require the use of the “*last resort*”, i.e. the instruments of criminal law.²⁵⁵ There are big differences between the national regulations of the individual states, and there is not the slightest uniformity. In many cases, the offence in question, which is harmful to the environment, is not even punishable; offenders make use of forum shopping and carry on with their activities in different states. Thus, poaching/acquisition takes place in one state, and preparation for trade in another, and the product, individual, or commodity reaches the final buyer via a further transit state. In judging each act, strict account must be taken of whether it is a one-off, stand-alone poaching operation (e.g. the unauthorised shooting of a deer) or an activity directed by an organised criminal group that systematically damages nature and habitats and is used to finance other criminal activities.²⁵⁶ Following the latter idea, it cannot be said that the destruction of a wild or even protected species is less of a crime, but the fact remains that acts that are the subject of international attention, including commercial activities, are always carried out on a large scale. The latter is understood to mean the mass collection or killing of species (even in the millions), which is unsustainable and can lead to extinction. Such acts are typically carried out with the help of organised crime;

²⁵⁵ Görgényi, Ilona: *Környezetvédelmi büntetőjog az európai elvárásokra figyelemmel* [Environmental criminal law in the light of European requirements], Agrár- és Környezetjog, No. 25. 2018. pp. 64–67.

²⁵⁶ The Rise of Environmental Crime p. 25.

there is also a cross-border element and a weak enforcement system in the state concerned, and supportive corruption is essential.

The International Congress of Penal Law also focused on the applicability of criminal sanctions:

*“Consistent with the principle of legality, there should be certainty in the definition of crimes against the environment. [...] A distinction should be drawn between sanctions which are imposed for non-observance of established administrative and regulatory standards, which do not include deprivation of liberty or punitive closing of an enterprise, and criminal sanctions which are imposed to prevent and punish culpable acts or omissions that cause serious harm to the environment.”*²⁵⁷

It also highlighted the importance of the implementation of international instruments: *“Where international conventions respecting crimes against the environment are not self-executing under domestic law with respect to execution of criminal sanctions, signatory States should implement such conventions by enacting the necessary domestic legislation.”*²⁵⁸

Criminal law protection of the environment is not new, either at national or international level. However, attempts to achieve widespread criminalisation have not led to the expected results. In general, the determination of individual criminal liability for acts falling under the umbrella term of environmental crimes remains in the hands of the judicial authorities of the states. As stated before, there are regulations on adverse legal consequences in a number of multilateral environmental conventions, but they leave the details to national legislation. In many cases, such acts are not criminalised. The various legal consequences, whether civil, criminal or administrative, all have their own specific functions in sanctioning acts that damage the environment. As crimes against the environment become an increasingly pressing problem for the international community, the emerging international criminal law may, in the future, create a separate category. However, at present, there is no such international environmental crime, despite the growing attention paid to environmental crimes in the practice of the International Criminal Court. The question is whether

²⁵⁷ de La Cuesta, José Luis (Ed.): Resolution of the Congresses of the International Association of Penal Law (1926-2004). *Recommendation of Section I. Crimes against the environment / II. Specific issues in relation to crimes against the environment*. In: XV.th International Congress of Penal Law, Rio de Janeiro, 4-10 September 1994, Available at: <https://www.penal.org/sites/default/files/files/RICPL.pdf>. p. 121.

²⁵⁸ Ibid, p. 124.

ecocide can fill this void in the legislation and provide an effective legislative framework for enforcement.

Several reports emphasised the connection between wildlife crime and transnational organised crime. A report from 2016 by the Secretary-General draws the attention of states to the ratification of international conventions against organised crime²⁵⁹ and corruption,²⁶⁰ which is considered a crucial step in the fight against organised crime.²⁶¹ In the communication of the United Nations' main organs, the member states are called upon to ratify and implement the UNTOC.²⁶² The UN Committee on Crime Prevention and Criminal Justice addressed illicit trafficking in 2007, focusing specifically on forest products.²⁶³ In May 2014, a follow-up resolution was adopted to strengthen targeted crime prevention and criminal justice response.²⁶⁴ There is a general reference to the need for states to do their utmost to fight organised crime and implement the analytical toolkit on wildlife and forest crime. The United Nations Office on Drugs and Crime also stressed that wildlife crime is closely linked to corruption, money laundering, other violent crimes and a clear pattern of cross-border organised crime.²⁶⁵ Transnational environmental crime is a significant threat to conservation efforts, and

²⁵⁹ Primarily, the United Nations Convention against Transnational Organised Crime. The international convention was signed in 2000 and entered into force in 2003. UNTS, Vol. 2225, p. 209. p. But, there are other international instruments concerning transnational organised crime, such as The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances UNTS 1582 (p.95) 1988. (1990.); Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. 2005 Council of Europe Treaty Series - No. 198, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997 (1999).

²⁶⁰ United Nations Convention against Corruption. Signed in 2003, 2005 UNTS Vol. 2349, p. 41. Doc. A/58/422.

²⁶¹ Report of the Secretary-General, A/70/951, *Tackling illicit trafficking in wildlife*, June 16, 2016.

²⁶² General Assembly Resolution A/RES/71/326 *Tackling illicit trafficking in wildlife*, September 28, 2017; ECOSOC Resolution 2011/36 on *Crime prevention and criminal justice responses against illicit trafficking in endangered species of wild fauna and flora*, July 28, 2001. General Assembly Resolution, A/77/L.99, *Tackling illicit trafficking in wildlife*, 17 August 2023.

²⁶³ Resolution 16/1, *International cooperation in preventing and combating illicit international trafficking in forest products, including timber, wildlife and other forest biological resources*, April 7, 2007.

²⁶⁴ Resolution 23/1 (May 2014) *Strengthening a targeted crime prevention and criminal justice response to combat illicit trafficking in forest products, including timber*, May 2014.

²⁶⁵ UNODC: Wildlife and forest crime. Available at: <https://www.unodc.org/roseap/en/what-we-do/toc/wildlife-forest-crime.html>.

because it appears in various forms, it is challenging to establish a unified framework for terminology and law enforcement.

The literature on merging ecocide and wildlife crime is quite limited, Ecocide Law published one paper. The research explicitly argues that ecocide could be a solution to the illegal trade in endangered species and to stop their extinction and wildlife crime. It can be fitted under the definition of the expert panel in the following definitional elements: “*severe and either widespread or long-term damage; unlawful or wanton.*”²⁶⁶ The authors argue that “*wildlife crime may offer fertile ground for the concept of ecocide to prove its viability and relevance*” and “*the prosecution of wildlife crime as ecocide offers an effective way to address this transnational crime, while highlighting its broader environmental impact.*”²⁶⁷ The researchers point out that wildlife crime may qualify as ecocide if the damage is “*severe and both widespread and long-term, and in most cases the acts will be unlawful.*” This argumentation relies on the definition of the expert panel to be implemented in the Rome Statute of the ICC. The authors also refer to the “*accountability gap*” concerning wildlife crime in relation to states unwilling or unable to prosecute such crimes.²⁶⁸ It is especially interesting where the authors argue about the “*wanton*” element of the crime: “*in the few cases where wildlife crime causes severe and either widespread or long-term damage to the environment and is not illegal, it will almost certainly satisfy the wanton criterion.*”²⁶⁹ I found the argumentation particularly astonishing, as the illegality of the act is a constitutive element of wildlife crime. The criminality of the offence relies on the fact that it was committed contrary to international or national legislation. Without fully questioning the outcome of the analysis, I believe that in the prosecution of wildlife crime, ecocide has limited relevance if we accept the definition of ecocide as the International Expert Panel defined it. Although ecocide is an umbrella term for all activities causing severe environmental consequences, wildlife crime and relevant environmental crimes could be involved in the terminology. I believe that in relation to wildlife crime, it is crucial to enforce the already existing legislation and to encourage states to ratify and enforce relevant international instruments, including UNTOC and UNCAC.

²⁶⁶ Mackintosh, Kate – Swaak-Goldman, Olivia – Dawson, Grant – van der Woude, Gaspard: *Wildlife Crime: Testing the Waters for Ecocide*. 2023. Promise Institute Symposium 2023: ‘An International Crime of Ecocide: New Perspectives.’ Available at: <https://ecocidelaw.com/wp-content/uploads/2023/08/10-Mackintosh-et-al-Ecocide-and-wildlife-crime.pdf>.

²⁶⁷ Mackintosh – Swaak-Goldman – Dawson – van de Woude (2023): pp. 9–10.

²⁶⁸ Ibid.

²⁶⁹ Ibid.

One of the main concerns concerning wildlife crime is, indeed, the lack of effective law enforcement. Countries seriously affected by wildlife crime often lack the necessary resources or knowledge to detect, investigate or prosecute such offences.²⁷⁰ Also, the tendency to corruption further makes the implementation of regulations harder. Based on the literature, the main problems of effective implementation of existing law enforcement are: under-resourcing and marginalisation; the fact that the true extent of the problem is not known; corruption; crime not being taken seriously or even viewed as criminal; and the overall lack of deterrent effect.²⁷¹ Although I do not necessarily believe that ecocide is an effective tool to combat wildlife crime, it can serve as a policy background to draw attention to the seemingly unstoppable loss of biodiversity, species protection and enforcement problems related to environmental crime.

5.3. The protection of the environment in times of armed conflict

When it comes to choosing between protecting the environment and achieving war aims, the natural world is often left behind, despite the many international instruments that apply to protecting the environment in times of armed conflict. This subchapter collects the relevant rules and legislation concerning the topic, also connecting this issue to the role of the ICC and the possible amendment of the Rome Statute.

5.3.1. International legal framework

Inter arma silent leges – in war, the laws are silent. But is this true of international agreements that directly or only indirectly protect the environment? The answer is no if we look at the corpus of public international law. Still, in the everyday reality of an armed conflict, the truth is that the aims of war overwrite the protection of the environment.

²⁷⁰ See Wellsmith, Melanie: *Wildlife Crime: The Problems of Enforcement*. European Journal of Criminal Policy and Research, Vol. 17, 2011. pp. 125–148. DOI: <https://doi.org/10.1007/s10610-011-9140-4>.

²⁷¹ These problems appear in most literature exploring enforcement issues of wildlife crime prosecution in particular Akella, Anita Sundari – Cannon, James B.: Strengthening the weakest links: Strategies for improving the enforcement of environmental laws globally. Washington, DC: Center for Conservation and Government. In: White, R. (Ed.) *Environmental Crime*, Cullompton, Willan Publishing, 2009. pp. 528–567.

The current war in Ukraine has also raised awareness about safeguarding the environment at times of war. To raise just one example, the extent of the destruction of wetlands of international importance, which are a priority for European biodiversity, is still unknown.

The rules on the protection of the environment cover both times of peace and armed conflicts. It could be argued that environmental protection regulation is not quantitatively objectionable in terms of international law, but two further issues arise. The first is the extent to which the international legal conventions and generally accepted rules of international law (customs) have met the technological challenges of the 21st century. The second is whether these instruments have been effectively enforced. The latter question can be examined from two further perspectives, namely, the approximation of the number of ratifying states (i.e. how universal is the support for the international convention in question) and whether ratifying states are complying with their obligations under the international treaty (i.e. whether the international convention is being effectively enforced). *Anikó Szalai* notes that a number of international conventions have had general clauses on the protection of the environment, including the Geneva Conventions. However, “*protection of the environment must be kept in mind to the extent that it is compatible with the law of war.*”²⁷²

To understand the legality of environmentally destructive activities, the main principles of international humanitarian law (IHL) have to be invoked, such as proportionality, military necessity, the principle of distinction between civilians and combatants, and between civilian objects and military objectives, and lastly, the principle of humanity.²⁷³ Relevant international law reflects environmental considerations, so states should evaluate environmental considerations when weighing necessity and proportionality in selecting legitimate military targets. These considerations are also reflected in the jurisprudence of the International Court of Justice. In its 1996 advisory opinion on the legality of the use or threat of use of nuclear weapons, the ICJ stated that “*The Court recognizes that the environment is under daily threat and that the use of nuclear weapons could constitute a catastrophe for the environment. The Court also recognizes that the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within*

²⁷² Szalai, Anikó: *The impact of armed conflicts on international treaties*. PhD thesis, Szeged, 2012. p. 105. Available at: https://doktori.bibl.u-szeged.hu/id/eprint/1376/1/Szalai_Aniko_PhD_disszertacio.pdf.

²⁷³ Kende, Tamás – Nagy, Boldizsár – Sonnevend, Pál – Valki, László (Eds.): *International law*. Wolters Kluwer Hungary, Second edition, Budapest, 2018. pp. 840–842.

their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment."²⁷⁴ Furthermore, a distinction must be made between regulations that explicitly aim to protect the environment and those where it is only "incidental." As Nóra Béres points out in her study, the body of treaty law on the subject is "narrow in scope and fraught with conceptual inconsistencies," which have also served as a "catalyst" for the codification of customary law.²⁷⁵

The UN body responsible for the codification of international law, the International Law Commission, has been working intensively on the issue for several years and, in 2022, adopted a draft codification and commentaries on the "*Basic Principles for the Protection of the International Environment in Times of Armed Conflict*."²⁷⁶ The draft is notable for establishing principles applicable to both international and non-international armed conflicts, including in times of occupation.²⁷⁷

International agreements guaranteeing the protection of the environment in armed conflicts can be found in public international law and the field of environmental law. Furthermore, *hard law*, so binding instruments, must be differentiated from *soft law*, including guidelines. Finally, there is a further overlap between international treaty law and customary law provisions. Non-binding sources cover both wartime and peacetime, mainly in the form of manuals for soldiers. Zsuzsanna Csapó discusses the dilemmas posed by the rules that the International Committee of the Red Cross has classified as customary international law. The ICRC identified 161 rules as elements of customs of international humanitarian law, three of which provided for protecting the natural environment. Under Rule 43, the general humanitarian law principles applicable to warfare also apply to the natural environment. Under Principle 44, due regard must be given to the natural environment in military operations, including the application of the precautionary approach. Finally, according to Principle 45, the use of "*a mode or means of warfare which is intentionally or likely to*

²⁷⁴ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, 1st C.J. Reports 1996, p. 226, para 29.

²⁷⁵ Béres, Nóra: *A környezet védelme és a fegyveres összeütközések, avagy miért nem hatékonyak a vonatkozó nemzetközi szerződések?* [Protecting the environment and armed conflict - why are the relevant international treaties ineffective?] *Fontes Juris*, Vol. 6. 2020, No. 1, p. 38.

²⁷⁶ *Draft principles on protection of the environment in relation to armed conflicts*. Yearbook of the International Law Commission, 2022, Volume II. Part Two.

²⁷⁷ International Law Commission, *Draft principles*, 2022. Preamble: "*Conscious of the need to enhance the protection of the environment in relation to both international and non-international armed conflicts, including in situations of occupation.*"

*cause widespread, long-term and serious damage to the natural environment is prohibited.”*²⁷⁸

The following table provides a comprehensive overview of the various international conventions that protect the natural environment primarily or additionally during times of armed conflict.

*Table 3: Relevant international conventions
– environmental protection in times of armed conflict*

Source as an instrument of international law	Acceptance of the multilateral international convention (universal value or number of ratifications) ²⁷⁹	Relevant legislative provisions ²⁸⁰
1977 Additional Protocol I to the Geneva Conventions relative to the Protection of Victims of War, 1949 ²⁸¹	ratified by 174 states, certain provisions are of a customary nature	Article 35 (3. <i>It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment</i>), Article 54 ([...] <i>objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive</i>), Article 55 (<i>protection of the natural environment</i>) Article 56 (<i>dams, [...]</i>).

²⁷⁸ Csapó, Zsuzsanna: A környezet védelme fegyveres konfliktusok idején – nemzetközi szokásjogi alapok [Protecting the environment in times of armed conflict - customary international law principles]. *Állam- és Jogtudomány*, Vol. LV. No. 3, 2014. pp. 7–18.

²⁷⁹ As of January 2025.

²⁸⁰ Relevant articles are cited unless included in the chapter.

²⁸¹ Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I) 1977 (1978) UNTS Vol. 1125 p. 3.

Source as an instrument of international law	Acceptance of the multilateral international convention (universal value or number of ratifications) ²⁷⁹	Relevant legislative provisions ²⁸⁰
The 1976 New York Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD) ²⁸²	Signed by 48 states, 16 of which have not ratified – there are 78 states parties	Article 1 <i>Each State Party to this Convention undertakes not to engage in military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State Party.</i>
The 1980 Geneva Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects and its Additional Protocols (CCW) ²⁸³	126 states have ratified or acceded to it. There are 119 States Parties to Protocol I, 106 to Protocol II as amended, 115 to Protocol III, 109 to Protocol IV and 97 to Protocol V	Additional Protocol III, Article 2 4. <i>It is prohibited to make forests or other kinds of plant cover the object of attack by incendiary weapons except when such natural elements are used to cover, conceal or camouflage combatants or other military objectives, or are themselves military objectives.</i>

²⁸² Convention on the prohibition of military or any other hostile use of environmental modification techniques 1976 (1978) UNTS Vol. 1108, p. 151.

²⁸³ Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (with Protocols I, II and III) 1980 (1983) UNTS Vol. 1342, p. 137.

Source as an instrument of international law	Acceptance of the multilateral international convention (universal value or number of ratifications) ²⁷⁹	Relevant legislative provisions ²⁸⁰
1992 Paris Convention on the Prohibition of the Expansion, Production, Stockpiling and Use of Chemical Weapons and on their Destruction ²⁸⁴	193 States Parties, 165 Signatories, of which 128 have a strategy covering all requirements under the Convention ²⁸⁵	Preamble: [...] <i>Determined for the sake of all mankind, to exclude completely the possibility of the use of chemical weapons, through the implementation of the provisions of this Convention, thereby complementing the obligations assumed under the Geneva Protocol of 1925, Recognizing the prohibition, embodied in the pertinent agreements and relevant principles of international law, of the use of herbicides as a method of warfare [...]</i>
Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction ²⁸⁶	164 State Parties, 133 Signatories	Article 5 4. <i>Each request shall contain: [...] (iii) Circumstances which impede the ability of the State Party to destroy all the anti-personnel mines in mined areas; c) The humanitarian, social, economic, and environmental implications of the extension</i> Article 7 <i>States Parties may request the United Nations, regional organizations, other States Parties or other competent intergovernmental or non-governmental fora to assist its authorities in the elaboration of a national demining program to determine, inter alia: [...] (f) The relationship between the Government of the concerned State Party and the relevant governmental, inter-governmental or non-governmental entities that will work in the implementation of the program.</i>

²⁸⁴ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction 1992 (1997) UNTS Vol. 1975, p. 45.

²⁸⁵ OPCW by numbers. Available at: <https://www.opcw.org/media-centre/opcw-numbers>.

²⁸⁶ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction 1997 (1999) UNTS Vol. 2056, p. 211.

Source as an instrument of international law	Acceptance of the multilateral international convention (universal value or number of ratifications) ²⁷⁹	Relevant legislative provisions ²⁸⁰
Convention on the law relating to the non-navigational uses of international watercourses ²⁸⁷	Parties to the Convention: 40, Signatory: 16	Article 29 “ <i>International water-courses and related installations, facilities and other works shall enjoy the protection accorded by the principles and rules of international law applicable in international and non-international armed conflict and shall not be used in violation of those principles and rules.</i> ”
Statute of the International Criminal Court, Rome Statute ²⁸⁸	125 states are involved: 33 African, 19 Asia-Pacific, 19 Eastern European, 28 Latin American and Caribbean, 25 Western European and other states.	Article 8. 2. (b) <i>Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts [...]</i> (iv) <i>Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.</i>

The first Additional Protocol to the Geneva Convention applies to international armed conflicts, imposing constraints on how military operations may be conducted. The treaty, amending the Geneva Convention of 1949, was signed due to newly developed methods of combat, and the rules applicable to the conduct of hostilities had become outdated.

²⁸⁷ Convention on the Law of the Non-Navigational Uses of International Watercourses 1997 (2014) UNTS Vol. 2999, p. 77.

²⁸⁸ Rome Statute of the International Criminal Court 1998 (2002) UNTS Vol. 2187, p. 3.

The Additional Protocol “*provides a reminder that the right of the parties to conflict to choose methods and means of warfare is not unlimited,*” and civilians have the right to be protected from the effects of an armed conflict.²⁸⁹ Article 55 on the protection of the natural environment echoes the definitional elements of ecocide:

“Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population. [...] Attacks against the natural environment by way of reprisals are prohibited.”

In relation to the ENMOD Convention, during the original negotiations and at the review conferences, efforts were made to clarify or eliminate the restrictive clauses “*having widespread, long-lasting or severe effects*”, but consensus on such a removal could not be reached.²⁹⁰ Based on Article II, the term “*environmental modification techniques refers to any technique for changing-through the deliberate manipulation of natural processes—the dynamics, composition or structure of the Earth, including its biota, lithosphere, hydrosphere and atmosphere, or of outer space.*”

Among the soft law sources, the final documents adopted at the global environmental conferences are noteworthy, as several of the principles set out therein have subsequently acquired legal relevance. In 1972, the Stockholm Declaration, while not explicitly referring to the protection of the environment in times of armed conflict, stated in Principle 21 that:

“States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause

²⁸⁹ ICRC: Additional Protocols to the Geneva Conventions of 1949. Available at: https://www.icrc.org/sites/default/files/document/file_list/dp_consult_4_1977_additional_protocols.pdf. p. 2.

²⁹⁰ United Nations Office on Disarmament Affairs: ENMOD. Available at: <https://disarmament.unoda.org/enmod/>.

*damage to the environment of other States or of areas beyond the limits of national jurisdiction.”*²⁹¹

Several principles of the Declaration adopted at the 1992 Rio Conference are worth mentioning. Principle 23 declares, “*The environment and natural resources of people under oppression, domination and occupation shall be protected.*” Moreover, the following principle, No. 24, explicitly states that in times of armed conflict, states must respect international law on protecting the environment:

*“Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary.”*²⁹²

Several UN General Assembly resolutions also address the issue under consideration. As is well known from the protection of biodiversity, paragraph 20 of the 1982 “*World Charter for Nature*” states that “*Military activities damaging to nature shall be avoided.*”²⁹³ In 1993, a specific resolution was adopted to protect the environment in times of armed conflict.²⁹⁴ The resolutions of the General Assembly are non-binding with few exceptions, but they serve as essential reasoning. Also, they provide proof of the states’ position on legal matters, shared beliefs and proof of unified states’ practice.

It is worth noting that the environmental damage caused by naval warfare has remained outside the scope of international law. The UN’s overarching convention, the *Montego Bay Convention on the Law of the Sea*, which was signed in 1982 and entered into force in 1994, also ignored

²⁹¹ Declaration on the United Nations Conference on the Human Environment, 1972, Stockholm. Principle 21. In: *Report of the United Nations Conference on Human Environment*, UN, New York, 1973. Available at: <https://documents.un.org/doc/undoc/gen/nl7/300/05/pdf/nl730005.pdf>.

²⁹² Rio Declaration on Environment and Development, Principles 23 and 24. In: *Report of the United Nations Conference on Environment and Development* Annex I., UN, GA, 1992. A/CONF.151/26 (Vol. I) Available at: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf.

²⁹³ General Assembly, A/Res/37/7. “World Charter for Nature” Available at: <https://documents.un.org/doc/resolution/gen/nr0/424/85/pdf/nr042485.pdf>.

²⁹⁴ General Assembly, A/Res/47/37. Protection of the Environment at times of armed conflict.

the issue.²⁹⁵ According to certain interpretations, the Convention applies at all times, so its provisions are also a guide in the event of armed conflict.²⁹⁶ War residues in the sea pose risks to the health of the oceans and human and marine life. The 2022 Principles, adopted by the International Law Commission, address several critical legal and environmental challenges that marine war poses to existing concepts. The Special Rapporteurs have taken a holistic approach to developing the principles, with some arguing that there remain significant gaps in knowledge, funding and technical capacity to address the problem. However, developments in this area of the law represent an important step forward in ensuring a healthy marine environment and have brought issues that had been overlooked to the fore.²⁹⁷ It is worth recalling that the law of war at sea has been developed sporadically anyway, mainly based on customary international law. The most authoritative, though not codified, guidance on the international law applicable to armed conflicts at sea, the San Remo Manual, is low-level, giving what is called “*due regard*” to “*the protection and preservation of the marine environment*” and does not discuss the consequences of war at sea.²⁹⁸ The threshold set by international humanitarian law, already mentioned, protects the environment, including the marine environment, only against “*widespread, long-term and serious damage.*”

5.3.2. Historical examples of environmental destruction in times of war

*“It was a waste so utter that even the ruin was ruined.”*²⁹⁹

The destruction of the natural environment has always been an inherent part of armed conflicts. For a long time, destroying environmental elements

²⁹⁵ United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982, in force 16 November 1994) UNTS Vol. 1833 p. 396.

²⁹⁶ Fink, M.: *The ever-existing “crisis” of the law of naval warfare*. International Review of the Red Cross, 104 (920-921), 2022, p. 1976. Doi: 10.1017/S181638312200073X.

²⁹⁷ Graham, Kimberly J.: *Turning the Tide on Remnants of War at Sea? Toward the Principles for Protection of the Environment in Relation to Armed Conflicts*. The International Journal of Marine and Coastal Law, Vol. 39, 2024, p. 787.

²⁹⁸ International Institute of Humanitarian Law: *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, 12 June 1994. Article 35: “*Due regard shall also be given to the protection and preservation of the marine environment.*” Available at: <https://ihl-databases.icrc.org/assets/treaties/560-IHL-89-EN.pdf>.

²⁹⁹ John Masefield, British author.

on a certain scale was a standard warfare method. However, throughout history, serious events have left a lasting mark, and their impact is often still felt today. In recent years, the armed conflict between Russia and Ukraine has drawn attention again to the destruction of the environment in war and catalysed the fight for the adoption of ecocide. As I mentioned before, environmental destruction as a method of warfare is not new. Even in ancient times, the systematic destruction or pollution of the natural environment was used to break the enemy's power. These methods included starvation (when defenders denied food or water). The attackers used the same methods to force defenders to surrender or as a counter-insurgency measure to quell a stubborn rebellion.³⁰⁰ Several dozen cases of conflict between states occurred due to water shortages or opponents applying war methods concerning water sources, including the generation of floods, poisoning water supplies, and destroying water facilities.³⁰¹ Even the first known international treaty resulted from a long-lasting conflict between two city-states, Umma and Lagash, over water sources and irrigation.³⁰²

As early as 512 BC, during the Persian-Scythian War, the Scythians, defeated by Darius the Great, resorted to a *scorched earth* policy in their retreat, causing long-term famine for the surrounding population. Later, during the Franco-Dutch War of 1672-1678, the Netherlands caused floods to hinder French forces. As part of the colonisation of the Americas, the ecosystem supporting the Indian tribes was wholly destroyed, causing the extinction of species such as pigeons and bison. The unprecedented systematic destruction of their food stores, crops and wildlife was intended to deprive Indian tribes of their livelihoods.³⁰³

The World Wars lead to unseen human suffering and environmental destruction. A significant part of European forests was destroyed or permanently altered as a result of the First World War. This was particularly true in France, where the armed conflict was concentrated in the same area for several months due to the “frozen” war. Soil contamination, mainly by heavy metals, is being experienced throughout Europe, thanks to the application of military objects and artillery fire.³⁰⁴ Forests meant not just

³⁰⁰ Teclaff, Ludwik A.: *Beyond Restoration – The Case of Ecocide*. Natural Resources Journal, Volume 34. No. 4. 1999, pp. 933–954.

³⁰¹ Pacific Institute: Water Shortage Chronology. Available at: <https://www.worldwater.org/conflict/map/>.

³⁰² Hatami, H. – Gleick, P.: Chronology of Conflict over Water in the Legends, Myths, and History of the Ancient Middle East. In: *Water, war, and peace in the Middle East*. Environment, Vol. 36. No. 3. Heldref Publications, Washington, 1994.

³⁰³ Teclaff (1991): pp. 933–954.

³⁰⁴ Souvent, P. – Pirc, S.: *Pollution caused by metallic fragments introduced into soils because of World War I activities*. Environmental Geology, Vol. 40, No. 3, 2001, 317.

battlefields but also protection for the soldiers: “*Forests have been of precious assistance to our soldiers; it is while concealed in them that we have lost the least men.*”³⁰⁵ The battle of Verdun began on 21 February 1916 and ended on 18 December 1916. The battle is one of the longest and bloodiest battles of the First World War. The Verdun area presented Germany with bad physical conditions to launch an offensive operation, including “*heavy and prolonged precipitation, long, cold winters, steep, east-facing escarpments and clayey soils that bogged down equipment and men.*”³⁰⁶ The battlefield resembles a “*lunar landscape*” due to the massive nature of the fortress, the parties were primarily concerned with their firepower. The German forces used their 420 mm gun, known as “*Big Bertha*”, and as a response, the French later brought 400 mm guns. Millions of shells and shrapnel were hurled at each other by the enemy forces, and over 10 months, the forests were devastated, and the applied military techniques destroyed the villages and turned the battlefield into a sea of mud, pitted with craters. The Germans at Verdun were already using flamethrowers to “*clear*” enemy trenches, but they were also using the killer gas phosgene, which had been developed shortly before.³⁰⁷

Before and during the Second World War, technological progress was rapid. Whereas in 1941, it took more than forty days to build a Liberty class cargo ship, in 1942, it took just a day or two. At the same time, the US war effort contributed to the ecological degradation of certain areas (for example, in the Bay Area of California), the loss of biodiversity and the exacerbation of social injustices.³⁰⁸ The production of battleships has led to serious ecological consequences. The applied methods, such as welding and burning, relied on acetylene gas and produced toxic fumes and steel by-products, including dust. As a result, oils soaked the ground, damaged the skin and lungs of workers, and contaminated food and water supplies.³⁰⁹

³⁰⁵ Risdale, P.S.: *Shot, Shell and Soldiers Devastate Forests*. American Forestry, Volume 22, 1916, p. 334.

³⁰⁶ Winters, H. A. – Galloway, G. E. – Reynolds, W. J. – Rhyne, D. W.: *Battling the Elements; Weather and Terrain in the Conduct of War*, MD: Johns Hopkins University Press, Baltimore, 1998. pp. 112–141.

³⁰⁷ Tarján, Tamás: *Véget ér a verduni csata* [The Battle of Verdun comes to an end]. Rubicon. Available at: <https://rubicon.hu/kalendarium/1916-december-18-veget-er-a-verduni-csata>.

³⁰⁸ JSTOR Daily: *Toxic Legacies of WWII: Pollution and Segregation*. Available at: <https://daily.jstor.org/toxic-legacies-of-wwii-pollution-and-segregation/>.

³⁰⁹ Forston, Alistair W.: *Victory Abroad, Disaster at Home Environment, Race, and World War II Shipyard Production*. California History, Vol. 94, No. 3, Fall 2017, p. 28.

Going beyond the natural environment, it was only after the Second World War that the protection of cultural heritage came to the attention of the international community. During WWII, both intentionally and as collateral damage, several irreplaceable heritage sites, which were essential elements of human history, were lost. As a result, in 1954, the Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention was accepted within the frames of UNESCO.³¹⁰ Currently, the Convention has 136 State Parties, including 49 Signatories. Later, in 1977, additional protocols to the Geneva Conventions of 1949 included Article 53, which prohibits “*any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples.*” Also, it was a question of the war to which extent cultural heritage and art are important compared to human suffering and the war aims. Although the answer to this question was not for protecting the emblems of human history for all, in June 1943, the so-called Roberts Commission, the American Commission for the Protection and Salvage of Artistic and Historic Monuments in War Areas, was formed. When 1944 they arrived in France, the ultimate goal of the Commission was still unknown, as later they were responsible for the recovery and restitution of millions of items of cultural importance. The Commission was originally established to protect works of art, cathedrals, archives, monuments, and other cultural sites in Europe from damage and looting. However, the Special Officers also investigated the disposition of looted art and helped reconstitute objects to their rightful owners.³¹¹ The “*Einsatzstab Reichsleiter Rosenberg (ERR)*” was created by *Alfred Rosenberg* to gather the finest artworks for display in Adolf Hitler’s proposed “*Fuhrermuseum.*” Most of the millions of items were illegally acquired or confiscated, stored and later found by the Roberts Commission in former salt mines, for example, in *Altaussee*.³¹²

During the Second World War, given the global nature of the armed conflict, it is not an exaggeration to say that there were negative environmental impacts in every corner of the world. However, in some regions, the long period of fighting and occupation lasted for many years,

³¹⁰ 1954 (1956) UNTS Vol. 249. p. 215.

³¹¹ Records of the American Commission for the Protection and Salvage of Artistic and Historic Monuments in War Areas (The Roberts Commission), 1943-1946. Published by the National Archives and Records Administration in Washington, DC, in 2007. Available at: <https://www.archives.gov/files/research/microfilm/m1944.pdf> p. 3.

³¹² Scheaffer, Erin: *Monuments Men: Preserving Cultural Heritage During a Period of Great Turmoil*. 28 May 2020. available at: <https://www.nationalww2museum.org/war/articles/monuments-men>.

and the intense fighting led to even more severe environmental impacts. In particular, in the area of the former Soviet Union, where three million German soldiers fought from 1941 onwards, troops quickly exhausted their stocks. As a result, German fighters tried to get supplies, food and water from the surrounding areas. In order to prevent the replacement of resources, the retreating Soviet troops engaged in the *scorched earth* method to deny the German troops food, fuel, and capital stock. In the western regions of the former Soviet Union, including present-day Ukraine, retreating troops took all their grain with them, starving their population and German troops. In the Baltic region, forests were cut down and razed to the ground. In the European sphere, American and British bombers attacked over one hundred German cities, destroying not just military targets but urban infrastructures, underground water and sewer systems. The US Air Force attacked Japanese cities and human settlements and later dropped atomic bombs on Hiroshima and Nagasaki. European forestry was still recovering at the time from the destruction of WWI, but the Second World War resulted in even more severe overharvesting and exploitation of natural resources, especially in France. The tropical forests also became exploited, as in 1939 and 1940 the British increased the harvesting of teak and other hardwoods in Burma, West Africa, and India.³¹³

Military techniques damage agricultural and wildlife areas and have the potential to disturb natural habitats. World War II destroyed agricultural, forest and other ecosystems, with entire cities disappearing from the face of the earth. The warring parties used high explosive and incendiary bombs to bomb densely populated urban and industrial areas, and two cities – Hiroshima and Nagasaki – are known to have been hit by nuclear attacks. The geographical extent of the war has damaged the ecosystems of many tropical Pacific islands. Germany also destroyed 200,000 hectares (about 17 per cent of the country's total area) of Dutch farmland by deliberate saltwater flooding.³¹⁴ The Second World War had a significant impact on the natural and built environment around the world. The human suffering and environmental destruction experienced during the armed conflict led to a paradigm shift in human rights, the law of armed conflict and humanitarian law.

³¹³ Closmann, Charles: The Environmental Impact. In: Piehler, G. Kurt – Grant, Jonathan A. (Eds.): *The Oxford Handbook of World War II*. Oxford University Press, Oxford, 2023, pp. 448–465. <https://doi.org/10.1093/oxfordhb/9780199341795.001.0001>.

³¹⁴ Stockholm International Peace Research Institute: *Warfare in a Fragile World Military Impact on the Human Environment*. Taylor & Frances Ltd., London, 1980, p. 17.

The methods used by the United States of America in the Vietnam War efforts were already emphasised as part of the history of ecocide. Based on the environmental impact of war, the Gulf War is worthy of mention. On 2 August 1990, Iraq invaded Kuwait, leading to an armed confrontation with severe environmental devastation, the actual effects of which are still unknown. The total amount of oil released into lakes and rivers was estimated at between 10 and 20 million tonnes, and the marine environment was also severely damaged. The amount of oil spilt is estimated to have been between 1 and 1.7 million tonnes.³¹⁵ It is estimated that the 1991 Gulf War oil spills accounted for more than 2% of global fossil fuel CO₂ emissions that year, with far-reaching and long-term consequences. The figure includes pollution from the fires, which contributed to the accelerated melting of Tibetan glaciers due to soot deposited on the ice.³¹⁶

Comprehensive research on ecosystem destruction concerning conflict zones and wars was published in 2024, which analysed 193 case studies between 1914 and 2023, mainly from countries on the African and Asian continents. The results show that 73% of the sources examined by the authors revealed adverse environmental impacts following armed conflict. In particular, they identified deforestation (34%), soil erosion (23%) and extinction of biodiversity and wildlife due to physical and chemical warfare methods.³¹⁷

Building, sustaining and training military forces require large quantities of natural resources, including common metals and rare earth elements, water and hydrocarbons, and are responsible for about 5,5 per cent of global CO₂ emissions worldwide. War has significant environmental impacts. The area's natural environment affected by armed conflict undergoes significant changes, including environmental degradation, pollution and loss of biodiversity. As methods of warfare have become more destructive over time, their environmental impact has also become more severe. Weapons of war contain heavy metals and other toxic or harmful substances, which, once released into the environment, have

³¹⁵ Lindén, Olof – Jernelöv, Arne – Egerup, Johanna: *The Environmental Impacts of the Gulf War 1991*. International Institute for Applied Systems Analysis, Interim Report IR-04-019. 2004. p. 6. Available at: <https://pure.iiasa.ac.at/id/eprint/7427/1/IR-04-019.pdf6>.

³¹⁶ Hobbs, Peter V. – Radke, Lawrence F.: *Airborne Studies of the Smoke from the Kuwait Oil Fires*. Science, Volume 256, Issue 5059, 1992, pp. 987–991. doi: 10.1126/science.256.5059.987.

³¹⁷ Meaza, Hailemariam et al.: *Managing the environmental impacts of war: What can be learned from conflict-vulnerable communities?* Science and the Total Environment, Volume 924, 2024, p. 171974. doi: 10.1016/j.scitotenv.2024.171974.

long-lasting impacts. Furthermore, huge amounts of waste are generated, and given the damage to municipal infrastructure in areas affected by armed conflicts, it is almost unthinkable that waste can be managed appropriately. Armed conflicts also generate significant GHG emissions, especially carbon dioxide, fuelling climate change and degrading environmental conservation efforts.³¹⁸

5.4. The role of international judicial forums, with special regard to the International Criminal Court

The International Criminal Court (ICC) was established by the Rome Statute,³¹⁹ which was signed on 17 July 1998 and entered into force on 1 July 2002. The Rome Statute of the International Criminal Court has 125 States Parties. Of them, 33 are African states, 19 are Asia-Pacific states, 20 are from Eastern Europe, 28 are from Latin American and the Caribbean, and 25 are from Western European and elsewhere.³²⁰ It has jurisdiction over four international crimes: genocide, crimes against humanity, war crimes and crimes of aggression. The crimes falling within the jurisdiction of the ICC are anthropocentric, which is a serious obstacle to holding perpetrators of environmental destruction accountable. The crimes to be declared require actual harm, which makes it difficult to prosecute and establish cases.³²¹ If the Statute were to be amended with ecocide, there would be a crime in the jurisdiction of the ICC, going beyond the strict anthropocentric view. The Stop Ecocide Foundation has set out several criteria for reasons why ecocide should be made an international crime and presented these at the 2021 UN Climate Change Conference.³²² One of these aspects is that most companies still prefer to take risks for profit, even with the possibility of liability waivers, and act contrary to environmental laws. According to Stop Ecocide, it would be a more significant deterrent if the offender were to face severe legal

³¹⁸ Conflict and Environment Observatory: *How does war damage the environment?* 4 June 2020. Available at: <https://ceobs.org/how-does-war-damage-the-environment/>.

³¹⁹ Rome Statute of the International Criminal Court. UNTS Vol. 2187, p. 3.

³²⁰ State Parties to the Rome Statute. Available at: <https://asp.icc-cpi.int/states-parties/states-parties-chronological-list>.

³²¹ Van Deursen, Joris – Eggens, Nina: *Environmental crimes in International Law: An exploration of the possibilities for criminalisation of ecocide*. Deviance Incubator 1 June 2021. Available at: <https://devianceincubator.wordpress.com/2021/06/01/environmental-crimes-in-international-law/>.

³²² COP26 Summary, 2021. The international climate conference occurred in Glasgow from 31 October to 12 November 2021.

consequences, including imprisonment for breaching environmental rules, or even if the perpetrators of the crime could be prosecuted for an international crime. Moreover, the damage to nature is valued in the same way as the damage to human life, which can make it clear to offenders that by polluting and destroying nature on a large scale, they ultimately harm human lives.³²³

As a so-called “*side event*” of the Assembly of State Parties to the Rome Statute of the International Criminal Court, the ecocide discussion has come up on several occasions. Not surprisingly, the biggest supporters of its adoption are the Small Island Developing States (SIDS), whose existence is threatened by sea-level rise caused by climate change and increasingly extreme weather. In December 2021, the concept of ecocide as a 5th international crime and its legal definition was presented at the Assembly of States Parties to the Rome Statute of the ICC in December 2021.³²⁴

The question is whether environmental harm can be adjudicated through crimes within the jurisdiction of the International Criminal Court. The most evident choice is section 8(2)(b)(iv) of war crimes, which is the successor to the discussion started in the 1980s within the framework of the International Law Commission:

“attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.”

But it is very important to emphasise that the aforementioned section of war crimes has never been prosecuted; it can be considered a “*sleeping*” clause of the Rome Statute. Based on the literature, it would be hard to prosecute such a case, as the term is “*narrowly defined and would be difficult to prosecute*” and also holds a “*dual threshold*” as “*the anticipated harm must be disproportionate to the anticipated military advantage and the environmental harm must be widespread, long-term and severe.*”³²⁵

³²³ Based on Ecocide and Climate Justice speech by the STOP Ecocide Foundation, available at: <https://www.youtube.com/watch?v=8ctiWD4F-bw&t=1392s>.

³²⁴ 20th Session of the Assembly of State Parties to the Rome Statute of the International Criminal Court, 7 December 2021.

³²⁵ Robinson, Darryl: “International Environmental Crimes and Ecocide.” In: Smith, Susan – Sahramaki, Iina (Eds.): Research Handbook on Environmental Crimes and Criminal Enforcement, Elgar, 2024, p. 3.

Ecocide, as severe environmental destruction and genocide, are often linked, especially in connection with Indigenous communities. There is a growing body of literature on the ecocide-genocide nexus, which will be analysed in the next chapter.

The ICC Statute defines crimes against humanity as a list of prohibited acts committed “*as part of a widespread or systematic attack directed against any civilian population.*”³²⁶ Prohibiting crimes against humanity was also labelled as a peremptory norm of general international law.³²⁷ Crimes against humanity can be linked to the destruction of the environment from two angles. Indirectly, when environmental destruction and crimes against humanity are “*legally separate but causally related.*” Directly, environmental harm is a part of crimes against humanity, establishing the category of “*environmental crime against humanity.*”³²⁸ The IUCN World Commission on Environmental Law proposed a crime of environmental destruction, later to be included in the “*Convention on Crimes against Humanity.*” In 2019, the International Law Commission submitted the “*Articles on Prevention and Punishment of Crimes against Humanity*” to address the existing legislative gap.³²⁹ There are separate international conventions concerning genocide and war crimes, but no similar treaty has been adopted so far concerning crimes against humanity. The current draft reflects the wording and the scope of the ICC Statute, but several countries proposed the amendment of the draft with environmental harm, which has not yet appeared in the draft.³³⁰ The states proposed different terminologies to amend Article 2 of the draft with “*ecocide*”, “*use of nuclear weapons*”, “*exploitation of natural resources*”, or “*economic and mineral exploitation and environmental degradation.*”³³¹ The acceptance of the international convention is still pending, but the growing interest in

³²⁶ ICC Statute, Article 7.

³²⁷ ILC: Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens). Adopted by the International Law Commission at its seventy-third session, in 2022, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/77/10, para. 43), 2022. Annex (c).

³²⁸ This classification relies on the work of Robinson (2024), p. 5.

³²⁹ Adopted by the International Law Commission at its seventy-first session in 2019 and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/74/10). Yearbook of the International Law Commission, 2019, vol. II, Part Two.

³³⁰ Countries, including Burkina Faso, Cameroon, Eritrea, Sierra Leone, Ethiopia, Morocco, and Nigeria.

³³¹ UNGA: Summary by the Chair on the deliberations at the first resumed session (2023) and at the second resumed session (2024) of the Sixth Committee on the draft articles on prevention and punishment of crimes against humanity and on the recommendation

environmental crime against humanity is visible from the attention of states, organisations and other non-state actors. In November 2024, the United Nations Sixth Committee adopted a resolution by consensus to advance a draft treaty on crimes against humanity to the negotiation stage. A couple of weeks later, on 4 December, the UN General Assembly adopted the Committee resolution without a vote, confirming the negotiation process. However, the current draft does not consider environmental harm or destruction; in the upcoming negotiations, it is expected to be advised for consideration by states.³³² The new Convention is to be accepted in 2029 at the earliest.

5.4.1. The “greening” practice of the International Criminal Court

The International Criminal Court has also addressed the issue of environmental damage. In 2016, the Office of the Prosecutor issued a Policy Paper on Case Selection and Prioritisation.³³³ The Office seeks cooperation on crimes classified as serious under national law upon request by states. The term includes illegal exploitation of natural resources, trafficking in arms and human beings, financial crimes and environmental degradation.³³⁴ Environmental damage and degradation are also among the criteria for case selection, often with serious consequences for local communities. Therefore, in view of these acts’ impact, the Office wants to pay increased attention to investigating acts involving environmental degradation, illegal land expropriation or illegal exploitation of natural resources.³³⁵ The ICC’s 2016 Policy Paper on environmental cases is forward-looking in several respects. Firstly, there is currently no international court with specific jurisdiction in the field of environmental law and, based on the ideas put forward, it is unlikely that this will be achieved in the near future. Secondly, access to environmental justice for non-state actors, whether as plaintiffs or defendants, is minimal. Finally, it is of the utmost importance that the international protection of the

of the International Law Commission. A/C.6/78/L.22/Add.1, 11 April 2024. *See* p. 9, para 35.

³³² UNGA A/RES/79/122, Resolution 79/122 United Nations Conference of Plenipotentiaries on Prevention and Punishment of Crimes against Humanity.

³³³ ICC Office of the Prosecutor: *Policy paper on case selection and prioritisation*. 15 September 2016. Available at: <https://www.icc-cpi.int/news/policy-paper-case-selection-and-prioritisation> [Policy Paper].

³³⁴ Policy Paper, p. 5.

³³⁵ Policy Paper, p. 12.

environment is defined as a common goal of humanity.³³⁶ Although the Office of the Prosecutor may pay attention to environmental damage, the unlawful expropriation of land and the unlawful exploitation of natural resources in its investigations and highlighting cases, they cannot be considered as separate facts before the ICC. The publication of the Policy Paper marked a shift towards environmental issues, and the ICC's changed understanding of environmental harm was thus visible. However, in the years following the adoption of the document, the shift has not materialised in new environmentally related cases. That hiatus may give an insight into the limitations of the current legal framework and raise doubts about the willingness to assess environmental harm adequately.

The Prosecutor's Office published a new policy paper in December 2024 on environmental crimes under the Rome Statute. Prior to the publication of the policy paper, a consultation of relevant stakeholders was convened to gather input on the inclusion of environmentally damaging acts in the ICC jurisdiction and to gather best practices.³³⁷ Emphasising the importance of the topic, the Prosecutor of the International Criminal Court, *Karim A.A. Khan KC* stated that: "*Damage to the environment poses an existential threat to all life on the planet. For that reason, I am firmly committed to ensuring that my Office systematically addresses environmental crimes in all stages of its work, from preliminary examinations to prosecutions. This latest policy initiative is another commitment to this necessary objective.*"³³⁸ Under the scope of the policy paper, 'environmental crimes' means "*crimes within the Court's jurisdiction that are committed by means of or that result in environmental damage.*"³³⁹ Under Section III environmental crimes are defined as the following:

³³⁶ Lehmen, Alessandra: *ICC To focus on environmental crimes: a landmark move for international environmental law*. 21 March 2017. Available at: <https://www.expertguides.com/articles/icc-to-focus-on-environmental-crimes-a-landmark-move-for-international-environmental-law/arljgbwe>.

³³⁷ ICC: The Office of the Prosecutor: Draft Policy on Environmental Crimes under the Rome Statute, 18 December 2024. Available at: <https://www.icc-cpi.int/sites/default/files/2024-12/2024-12-18-OTP-Policy-Environmental-Crime.pdf>.

³³⁸ ICC, The Office of the Prosecutor launches public consultation on a new policy initiative to advance accountability for environmental crimes under the Rome Statute 16 February 2024. Available at: <https://www.icc-cpi.int/news/office-prosecutor-launches-public-consultation-new-policy-initiative-advance-accountability-0>.

³³⁹ Policy Paper on Environmental Crimes (2024), p. 3.

“Environmental crimes are crimes in article 5 of the Rome Statute that are committed by means of or that result in environmental damage. The following types of acts are thus covered by the Policy:

- a. The crime in article 8(2)(b)(iv) of the Rome Statute, which expressly refers to environmental damage as part of its legal elements.*
- b. Rome Statute crimes committed by means of environmental damage, making the damage a material fact relevant to establishing an element of the crime and/or the actus reus of a mode of liability.*
- c. Rome Statute crimes resulting in environmental damage, making the damage contextual information relevant to assessing the gravity or the impact of the crime, and for informing selection and prioritisation, sentencing, and reparations.”³⁴⁰*

The significance of the policy paper is unquestionable, as it highlights the Prosecutor’s commitment to prosecuting and adjudicating environmental crimes in relation to a group of offences that are “*historically neglected*.”³⁴¹ The policy paper is an integral part of a process begun in 2016, which, while recognising the limits of the ICC’s jurisdiction, acknowledges that “*destroying, degrading, or otherwise altering the natural environment*” is often linked to human suffering and states that the court will seek to prioritise the adjudication of these acts.

³⁴⁰ Policy Paper on Environmental Crimes (2024), p. 11.

³⁴¹ Policy Paper on Environmental Crimes (2024), p. 8.

CHAPTER 6.

ECOCIDE AND HUMAN RIGHTS WITH PARTICULAR FOCUS ON THE APPLICABILITY OF THE HUMAN RIGHTS APPROACH TO THE ECOCIDE CONCEPT

*"Modern man must re-establish an unbroken link with nature
and with life."³⁴²*

Environmental degradation severely affects the enjoyment of human rights. Without a healthy environment, not just the third generation of human rights are endangered, but also other fundamental rights such as the right to life, privacy or family life. In this chapter, I would like to concentrate on the connection between human rights and the state of the environment, highlighting the applicability of the human rights approach in implementing ecocide. As it has forcefully appeared in the practice of human rights courts, there are a growing number of cases concerning climate change, environmental harm, and pollution. So, in the following years, ecological considerations are expected to appear in the case law of human rights bodies. The growing practice of climate litigation is establishing a link between the rights of future generations, sustainability and human rights, merging otherwise isolated but interrelated areas of international law.

³⁴² Gandhi, Indira: The speech of the prime minister of India on 14 June 1972, at the plenary session of the UN Conference on Human Environment.

6.1. The state of the environment and the enjoyment of human rights as inseparable elements in the light of ecocide

The interface between ecocide and human rights can be approached from two different angles. First, serious acts of environmental destruction, which may fall within the concept of ecocide, lead to serious violations of human rights. In a broader sense, there is an urgent need to develop a new human rights perspective on climate change. This perspective should be based on intergenerational equity and the rights of future generations, as relevant literature concerning climate mitigation emphasises. This shift is crucial in addressing the complex challenges of climate change. The second link concerns the extent to which existing human rights instruments, conventions, and forums of human rights protection can help remedy the violation of rights caused by ecocide. Furthermore, it is possible to bring proceedings before the relevant forums to question current company practices which lead to climate change, as shown by climate litigation. As early as 1994, the *Report on Human Rights and the Environment* highlighted that environmental damage directly impacts the enjoyment of a range of human rights, including the right to life and health:

*“Environmental damage has direct effects on the enjoyment of a series of human rights, such as the right to life, to health, to a satisfactory standard of living, to sufficient food, to housing, to education, to work, to culture, to non-discrimination, to dignity and the harmonious development of one’s personality, to security of person and family, to development, to peace [...]”*³⁴³

1972 was a turning point in environmentalism in several aspects. It was the first time that the Member States of the United Nations gathered together to discuss environmental issues with international relevance. The final document of the Conference, the “*Stockholm Declaration*”, indisputably provided the first list of environmental principles that later gained international recognition. Several of the defined principles later gained legal relevance in international environmental law, leading the way to court decisions, customs and international conventions. Also, the Declaration recognises that both forms of the human environment, natural and man-made, are the basis for human rights and well-being:

³⁴³ Ksentini, Fathma Zora: *Report on Human Rights and the Environment*. E/CN.4/Sub.2/1994/9. 6 July 1994, section 248.

*“Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet, a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights the right to life itself.”*³⁴⁴

As was established earlier, the first link between ecocide and human rights is the impact of certain activities that cause severe environmental damage on the enjoyment of human rights. The adverse effects of severe environmental damage in this direction have already been examined, particularly in relation to human rights, where the negative changes caused by climate change have been cited as a primary reference. The link between human well-being and environmental quality is complex and inextricable. Human rights have long provided an opportunity to approach the most profound injustices from a legal perspective, for example, in the fight against discriminatory treatment and poverty. At the same time, there is a growing demand within the international community for a similar approach to climate change, combining intergenerational equity, the rights of future generations and the right to a healthy, liveable environment.³⁴⁵ The reference to future generations has also found its way into the decisions of the highest judicial fora of states, particularly developing states, which are already experiencing the negative effects of climate change. The Indian Supreme Court, in a case concerning deforestation, referred to “*environmental and ecological sustainability, sustainable development considerations and the rights of future generations*” in its reasoning as early as 1996.³⁴⁶ At the same time, it is crucial to emphasise that the link between the environment and human rights is not only captured through third-generation human rights. The practice in various human rights fora suggests that the intersection of civil and political rights can also be challenged in the context of environmental degradation.³⁴⁷

³⁴⁴ Declaration of the United Nations Conference on the Human Environment. Stockholm, 1972. Preamble, point 1.

³⁴⁵ Adelman, Sam: *Human Rights and Climate Change*. Legal Studies Research Papers, University of Warwick School of Law, No. 4. 2014. p. 5.

³⁴⁶ State of Himachal Pradesh v. Ganesh Wood Products (1995) 6 SCC 363. 20.

³⁴⁷ Mladenov, Marijana – Serotila, Igor: *Human rights' approach to environmental protection: Practice of the Human Rights Committee*. Pravo - teorija i praksa, Vol. 39. No. 2. 2022,

Some famous milestone cases serve as critical examples of environmental destruction, emphasising the vulnerability of Indigenous communities, developing countries and sensitive populations. One of these examples is the case of *Ogoniland* in Nigeria, a particularly astonishing long-running environmental saga of harm and ecocide. For decades now, the Niger Delta has been a hub for oil production and pollution that has left the Ogoni tribe suffering despite successful court rulings and relief programmes. In 2014, the High Court in London ruled against Shell in a class lawsuit, and the company was held fully responsible for the more than two thousand ruptures of the Bodo-Bonny trans-Niger pipeline.³⁴⁸ This ruling served as a basis for compensation claims, but the case also has a solid human rights relevance, which was proved in the case before the African Commission on Human and Peoples' Rights. The international community's attention was drawn to the proceedings initiated in 1996 before the African Commission on Human and Peoples' Rights when two NGOs appealed to the body. The Ogoni tribe of some 500,000 people living in the southern part of the Niger River (Ogoni land) subsist mainly on fishing and agriculture. Oil has been extracted in the region since 1958 by a joint venture between the Nigerian National Oil Company and Shell. Between 1976 and 1991, almost 3,000 oil spills occurred at the company's facilities, releasing more than 1.6 million gallons of oil into the environment. Contaminated water, air and land have led to a high incidence of diseases in local communities, particularly skin, digestive and respiratory diseases, as well as various forms of cancer. The Commission considered all the points of the petition to be well-founded. It stated that the Nigerian government had violated Articles 2, 4, 14 (right to property), 16 (right to the highest attainable standard of health), 18 (1) (right to family), 21 (right to use natural resources) and 24 (right to an adequate natural environment) of the African Charter on Human and Peoples' Rights.³⁴⁹ However, neither the Commission's decision, the compensation cases brought before the European courts, nor the

p. 60. DOI: 10.5937/ptp2202052M.

³⁴⁸ Royal Courts of Justice, London, Case: HT-13-296 and HT-13-339 to 350. The Bodo Community and Others v The Shell Petroleum Development Company of Nigeria Limited 20th June 2014.

³⁴⁹ Coomand, Fons: *The Ogoni Case before the African Commission on Human and Peoples' Rights*. The International and Comparative Law Quarterly, Vol. 52. No. 3. July 2003, pp. 749–760.

remediation plan developed by the UN Environment Programme have provided a solution for the Ogoni tribe.³⁵⁰

Environmental rights are not free from terminological and legal debates, but the close link between the environment and human rights is now indisputable. War conflicts and their associated environmental impacts also severely limit the enjoyment of human rights. The instruments that guarantee the protection of the environment in armed conflicts are described in the relevant chapter.

6.2. The third generation of human rights in the context of environmental harm

A detailed analysis of the third generation of human rights lies outside the scope of this chapter and, in consequence, only the main character of these rights will be summarised. Still, it is important to identify the fundamental roots of these rights to understand the applicability of the human rights approach to the ecocide concept. The body of human rights found its way to public international law in the 20th century because, for a long time, international law had been state-centred, and the “*legal personhood*” of individuals only emerged much later in public international law, particularly in connection with human rights.

In the traditional era of international law, natural persons were out of the scope of public international law as subjects. The traditional, state-centred conception has been modified because the individual has also become subject to international law but not in the same capacity as states. The recognition of the legal personality of the individual has made the development of a human rights system in international law possible.³⁵¹ Human rights are considered the embodiment of the active legal personality of the individual. The “*legal personhood*” of individuals greatly affects how natural persons can appear in the body of international law, specifically as subjects and live actors in the field of human rights protection.³⁵²

³⁵⁰ UNEP: *Environmental assessment of Ogoniland: Site Factsheets, Executive Summary and Full report*. 2 August 2011. Available at: <https://www.unep.org/resources/assessment/environmental-assessment-ogoniland-site-factsheets-executive-summary-and-full>.

³⁵¹ Kiss, Amarilla: *A nemzetközi jog különleges alanyai* [The special subjects of international law] In: Jakab András – Könczöl Miklós – Menyhárd Attila – Sulyok Gábor (Eds.): *Internetes Jogtudományi Enciklopédia* [Online Legal Encyclopaedia], 2019. 1.2. [15] Available at: <http://ijoten.hu/szocikk/a-nemzetkozi-jog-kulonleges-alanyai>.

³⁵² See Vatter, Miguel – de Leeuw, Marc: *Human Rights, Legal Personhood and the Impersonality of Embodied Life*. Law, Culture and the Humanities, Vol. 19. No. 1. 2023, pp. 106–125.

Although the protection of human rights has a long history, the instruments were reformed after World War II “*that helped spark a global movement to define and protect individual human rights*”.³⁵³ In the classical system, human rights can be categorised into three generations. The first generation includes the rights that emerged during the English and French Revolutions and the American Revolutionary War, the so-called civil and political rights. These include fundamental rights such as the right to life, freedom of thought, conscience and religion, and the protection of family and private life. The second generation is the result of a later legal development. It includes civil, social, and cultural rights, such as the right to education, health, and social security. The third generation of human rights has emerged most recently. It is much vaguer than the first two categories and is considered a collection of “*solidarity rights*” because they can be exerted collectively, not individually. These include the right to development, the right to peace and the right to a healthy environment. Today, the third generation of rights has been extended to include the rights to water and food. The third generation of human rights emerged in the 20th century due to global challenges, specifically in the context of international law. These rights are generally collective in nature, and their enforcement requires global cooperation. Some rights are fundamental, but most of them, like the right to development, are aspirational, so their content, subject matter and enforceability are uncertain.³⁵⁴ Also, some other human rights in the third generation, such as the right to water and food, are even more programme-like since they are outside the scope of traditional human rights instruments. However, the third generation of human rights is closely connected to ecocide, as their enjoyment relies on the good ecological conditions that are seriously threatened by environmental degradation.

³⁵³ Waters, Stewart – Russell III, William B.: *The World War II Era and Human Rights Education*. Social Education Vol. 76. No. 6. 2012, pp. 301–305.

³⁵⁴ Cornescu, Adrian Vasile: *The generation of human rights*. Dny práva – 2009 – Days of Law: the Conference Proceedings, 1. edition. Brno: Masaryk University, 2009. pp. 1–11. Available at: https://www.law.muni.cz/sborniky/dny_prava_2009/files/prispevky/tvorba_prava/Cornescu_Adrian_Vasile.pdf.

6.2.1. The legal foundation of environmental rights

Environmental protection has, over the course of time, found its way into the human rights regime. This right is often labelled with adjectives such as clean, healthy, sustainable or adequate.³⁵⁵ The right to a healthy environment is a third-generation human right, with characteristics that differ in several respects from those of the first two generations. The right to the environment is global, so it is not just for the survival of individuals or groups but for the survival of all humanity. The nature of environmental problems means that a single state's efforts are often insufficient to achieve ecological goals. Violating the right to the environment is not usually immediate but takes longer to take effect. For example, a state-owned industrial plant's pollution of drinking water supplies is often discovered years later and can only be detected by instrumentation. The right to the environment is not included in the "*classical catalogues*" of human rights, as they were adopted before the third generation of human rights. These conventions focus mainly on the first generation of human rights, and the amendments included social, economic and cultural rights. The traditional human rights instrument, the "*International Bill of Human Rights*",³⁵⁶ does not explicitly include the right to a healthy environment.

The legal foundations for third-generation human rights are to be established at both international and domestic legal levels. Still, they are increasingly appearing in soft law documents and international agreements. Adopting a resolution on the right to the environment by the UN Human Rights Council in 2021 was a significant milestone. This document stressed that a clean, healthy, and sustainable environment is critical to the enjoyment of all human rights. Furthermore, environmental degradation, climate change and unsustainable development were identified as the most urgent and severe threats to human rights, including the right to life, of present and future generations.³⁵⁷ A further relevant resolution was adopted by the UN General Assembly in 2022, stating that the right to a clean, healthy and sustainable environment is linked to other rights and existing international law and affirming that its promotion requires the

³⁵⁵ For example, the UN Human Rights Council adopted Resolution 48/13, recognising that "*having a safe, clean, healthy, and sustainable environment is indeed a human right.*" 2021.

³⁵⁶ Universal Declaration of Human Rights (1947), the International Covenant on Economic, Social and Cultural Rights (1966), and the International Covenant on Civil and Political Rights and its two Optional Protocols (1966).

³⁵⁷ Human Rights Council: 48/13 Resolution adopted by the Human Rights Council on 8 October 2021 "*The human right to a clean, healthy and sustainable environment.*" p. 3.

full implementation of multilateral environmental agreements based on the principles of international environmental law.³⁵⁸ However, despite the undisputed importance of soft law documents, there is considerable uncertainty surrounding the mechanisms for protecting third-generation human rights and a lack of uniform state practice.³⁵⁹ Establishing a clear framework for enforcement will go a long way towards ensuring the effective enjoyment of these rights, thus contributing to the building of green democracies. The European Union's catalogue of fundamental rights,³⁶⁰ which the Lisbon Treaty has elevated to the level of primary law, although it includes an environmental article, does not explicitly guarantee the right to a healthy, liveable or clean environment. Article 37 merely declares that:

“A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.”

Some regional international treaties established a link between environmental and human rights concerning the rights of future generations and sustainable development. These treaties typically take the right to the environment but approach the issue from a procedural perspective. A classic example is the Aarhus Convention, adopted under the auspices of the UN Economic Commission for Europe, on access to information, public participation in decision-making and access to justice in environmental matters.³⁶¹ Finally, some “soft law” documents also set out the right to the environment as a “principle”. This includes the 1992 Rio Declaration, which states that “human beings are at the centre of the idea of sustainable development. They are entitled to live healthy and productive lives in harmony with nature.”

In 2019, the UN Human Rights Council concerning the International Covenant on Civil and Political Rights stated that:

³⁵⁸ UNGA: Res A/76/L.75 28 July 2022 “*The human right to a clean, healthy and sustainable environment.*” pp. 2–3.

³⁵⁹ See Cogan, Jacob Katz (Ed.): *The United States Recognizes the Human Right to a Clean, Healthy, and Sustainable Environment*. American Journal of International Law, Vol. 117. Issue 1. (January 2023) pp. 128–133. DOI: <https://doi.org/10.1017/ajil.2022.85>.

³⁶⁰ Charter of Fundamental Rights of the European Union OJ C 202, 7.6.2016, pp. 389–405.

³⁶¹ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus, 1998 (2001) UNTS Vol. 2161, p. 447.

*“environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”*³⁶²

Furthermore, state parties should

*“ensure sustainable use of natural resources, develop and implement substantive environmental standards, conduct environmental impact assessments and consult with relevant States about activities likely to have a significant impact on the environment, provide notification to other States concerned about natural disasters and emergencies and cooperate with them, provide appropriate access to information on environmental hazards and pay due regard to the precautionary approach.”*³⁶³

In 2018, the Committee on Economic, Social and Cultural Rights released a similar statement concerning climate change and its effects on human rights.³⁶⁴

One of the most well-known documents concerning sustainable development is the Report that established the exact definition of the concept. In 1987, the final report of the Brundtland Commission, *“Our Common Future”*, included the following statement: *“all human beings have the fundamental right to an environment adequate for their health and well-being.”*³⁶⁵ To reach sustainability, *“some necessary changes in the legal framework start from the proposition that an environment adequate for health and well-being is essential for all human beings, including future generations.”*³⁶⁶

Most human rights treaties were adopted before the era of environmental consciousness, so the treaty law does not guarantee the right to a safe and healthy environment. However, there are several non-binding instruments where the right to a healthy environment appears. Furthermore, several international conventions contain indirect references.³⁶⁷ The right to a

³⁶² UN Human Rights Committee: *International Covenant on Civil and Political Rights, General Comment*, 2019. No. 36 CCPR/C/GC/ para 62.

³⁶³ Ibid.

³⁶⁴ Committee on Economic, Social and Cultural Rights: *Climate change and the International Covenant on Economic, Social and Cultural Rights, Statement*, 2018.

³⁶⁵ *Our Common Future: Summary of Proposed Legal Principles for Environmental Protection and Sustainable Development*, Adopted by the WCED Experts Group on Environmental Law, 1987. Available at: <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>. Annexe 1, 1.

³⁶⁶ *Our Common Future*, Annexe 1, 56 para 76.

³⁶⁷ European Parliament: *A universal right to a healthy environment*. 2021. Available at: https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698846/EPRS_

healthy environment exists as a component of human rights in general and the right to life specifically, as well as in the body of environmental law and connection areas, such as humanitarian law.³⁶⁸ The International Covenant on Economic, Social and Cultural Rights³⁶⁹ provides the right to the highest attainable physical and mental health standard and calls on state parties to take steps to improve all aspects of environmental and industrial hygiene.³⁷⁰ The Convention on the Rights of the Child provides that parties shall take appropriate measures to combat disease and malnutrition by providing adequate nutritious foods and clean drinking water, considering the dangers and risks of environmental pollution.³⁷¹

The main regional human rights conventions contain the right to a healthy environment to some extent: the African Charter of Human Rights and Peoples,³⁷² the Arab Charter of Human Rights³⁷³ and the Protocol of San Salvador.³⁷⁴ In the European sphere, the preamble of the Aarhus Convention³⁷⁵ also refers to an adequate quality of the environment. Nevertheless, the European Convention on Human Rights, opened for signature in 1950, does not mention any environmental standards or rights. Although the greening practice of the European Court of Human Rights (ECtHR) reflects the development of environmental standards, the evolving interpretation of human rights can raise questions.³⁷⁶ In this manner, the ECtHR interprets the already declared human rights that “*can be undermined by the existence of harm to the environment and exposure*

ATA(2021)698846_EN.pdf.

³⁶⁸ Lytton, Christopher H.: *Environmental human rights: Emerging trends in international law and ecocide*. Environmental Claims Journal, Vol. 13. No. 1. p. 73. DOI: <https://doi.org/10.1080/10406020009355152>

³⁶⁹ International Covenant on Economic, Social and Cultural Rights 1966 (1976) UNTS Vol. 993, p. 3.

³⁷⁰ Art. 12. 1. “*The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*” and 2. [...] (b) “*The improvement of all aspects of environmental and industrial hygiene,*”

³⁷¹ Art. 24. 2. (c) “*To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;*”

³⁷² Art. 24. “*all peoples shall have the right to a general satisfactory environment favourable to their development.*”

³⁷³ Art. 38. “*...every person has the right [...] to a healthy environment.*”

³⁷⁴ Art. 11. “*everyone shall have the right to live in a healthy environment.*”

³⁷⁵ Preamble “*every person has the right to live in an environment adequate to his or her health and well-being.*”

³⁷⁶ CoE: *Environment and the European Convention on Human Rights*. pp. 1–36. Available at: https://www.echr.coe.int/documents/d/echr/fs_environment_eng

to environmental risks.”³⁷⁷ These rights are primarily the right to life (Art. 2), the prohibition of inhuman or degrading treatment (Art. 3), the right to liberty and security (Art. 5), the right to a fair trial (Art. 6), the right to respect for private and family life and home (Art 8), the freedom of expression and the freedom to receive and impart information (Art. 10) and the protection of property (Art.1 of Protocol No. 1 to the Convention). There is an ongoing dispute about a new additional protocol to the ECtHR concerning the right to a healthy environment, which has also emerged with the growing importance of environmental considerations. The prominent supporters of the new protocol are civil society organisations.³⁷⁸ However, the importance of environmental protection and the correlation between a healthy environment and human rights also appears in the Reykjavík process of focusing and strengthening the work of the Council of Europe, as laid out in Appendix V, “*The Council of Europe and the environment*”.³⁷⁹ The resolution of the UN Human Rights Council is the leading catalyst for human rights development, and it has finally declared the universal right to a healthy environment.³⁸⁰ One must not forget that the declaration is a non-binding document. On the other hand, soft law has been an essential source of international environmental law, often leading to the development of compulsory law regimes.

In recent years, there have been some cases where the relevant court has had the opportunity to form a strong opinion on the right to a healthy environment or establish a connection between environmental degradation and human rights. These examples highlight how the strict regulations concerning the jurisdiction of such entities or the rules of procedure limit the scope of the judicial decision-making bodies. One of the most important examples is the claim of the Inuit people, who wanted to initiate

³⁷⁷ Friedrich (2013): pp. 143–371.

³⁷⁸ Call for the adoption of an additional Protocol to the European Convention on Human Rights on the right to a clean, healthy, and sustainable environment 15 March 2024 Available at: https://www.amnesty.eu/wp-content/uploads/2024/03/ENG_-Call-for-the-adoption-of-an-additional-Protocol-to-the-European-Convention-on-Human-Rights-on-the-right-to-a-clean-healthy-and-sustainable-environment-2.pdf, also the European Network of National Human Rights Institutions, the ENNHRI calls on Council of Europe Member States to adopt a binding instrument on the right to a healthy environment. Available at https://ennhri.org/wp-content/uploads/2024/06/ENNHRI-updated-statement-to-CoE-Member-States-binding-instrument-on-the-right-to-a-healthy-environment_June-2024.pdf.

³⁷⁹ CoE: *Reykjavík Declaration, United around our values*. 16–17 May 2023 pp. 6–7. Available at: <https://rm.coe.int/4th-summit-of-heads-of-state-and-government-of-the-council-of-europe/1680ab40c1>.

³⁸⁰ A/HRC/48/L.23/Rev.1

a case at the Inter-American Court of Human Rights concerning the devastating activities of polluting states.

Climate change is undeniably hurting the Arctic, the realm of the Inuit people, from Canada to Greenland. The anticipated impacts of climate change and the environmental damage that has already occurred, including loss of ice cover, barriers to access to natural resources and infrastructure, and loss of homes, all threaten the survival of the Inuit. The livelihoods and cultural identities of Indigenous peoples in the Arctic region are highly dependent on the resources available and the ecosystem of the Arctic ice-covered areas. Negative changes caused by climate change not only impede the human rights of the Indigenous communities concerned but also threaten their survival. The United States of America is one of the largest emitters of greenhouse gases, responsible for a quarter of total emissions. However, no state can be held accountable for emissions alone, neither through the liability regime of international law nor through the protection of human rights.³⁸¹ In 2005, two organisations filed a complaint with the Inter-American Commission on Human Rights against the United States and Canada, alleging that their actions, or lack thereof, related to climate change violated the human rights of the Inuit people. However, the Commission dismissed the complaint on the grounds of lack of jurisdiction, as it had not been proven that any of the rights enshrined in the Inter-American Convention on Human Rights³⁸² had been violated.³⁸³

The unfavourable position of the Commission is summarised in only two paragraphs. *Watt-Cloutie*, on behalf of Earthjustice and the Centre for International Environmental Law, requested more information and a hearing on the links between climate change and human rights. The latter took place in 2007. Although the Inuit people's claim did not achieve concrete success in the human rights protection system, it can be seen as a manifestation of creative legal thinking that transcended US domestic legal constraints and took the case to an international level. The initiative is located at the intersection of two critical areas: human rights litigation and petitions and the origins of legal proceedings and actions focusing

³⁸¹ Wagner, Martin – Goldberg, Donald M.: *An Inuit Petition to the Inter-American Commission on Human Rights for Dangerous Impacts of Climate Change*. 10th Conference of the Parties to the Framework Convention on Climate Change, Buenos Aires. 2004. Available at http://www.ciel.org/Publications/COP10_Handout_EJCIEL.pdf.

³⁸² American Convention on Human Rights "Pact of San José, Costa Rica" 1969 (1978) UNTS Vol. 1144, p.123.

³⁸³ Letter from Ariel E. Dulitzky, on behalf of the Organization of American States and the Inter-American Commission on Human Rights, rejecting the initiative, 16 November 2006. Available at <http://graphics8.nytimes.com/packages/pdf/science/16commissionletter.pdf>.

on climate change.³⁸⁴ The Inuit case would have provided an opportunity to strengthen the correlation between human rights and the environment, but the Commission has shied away from this possibility. However, the initiative is one of the first examples to establish a link between the negative impacts of climate change and human rights violations. It is expected that similar procedures will be initiated in the future.³⁸⁵

As environmental rights gain momentum, the debate about them is evolving, and the legal acceptance of third-generation human rights is unquestionable. Interestingly, we still lack binding instruments concerning environmental rights; it is a growing question of international law whether the right to a healthy environment can be considered a *ius cogens* norm. The right forms the necessary foundation for fully realising all other human rights because “*they would become meaningless to a community unable to breathe, drink, produce food, clothing and shelter.*”³⁸⁶

6.2.2. Right to water

Water is essential to life. Without clean water, there is no life, but the end-route of human water management, sanitation and drainage also significantly impacts living conditions and human health.³⁸⁷ The importance of water was also highlighted by the UN’s “*Water for Life*” decade, which promoted efforts to fulfil international commitments made on water and water-related issues from 2005 to 2015.³⁸⁸ In 2010, the UN General Assembly recognised the right to water and sanitation as essential for the fulfilment of all human rights:

*“Recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights;”*³⁸⁹

³⁸⁴ Osofsky, Hari M.: *The Inuit Petition as a Bridge? Beyond Dialectics of Climate Change and Indigenous Peoples’ Rights*. American Indian Law Review, Vol. 31., 2007. p. 676.

³⁸⁵ See Foster, Patrick: *Climate Torts and Ecocide in the Context of Proposals for an International Environmental Court*. CUNY Academic Works. pp. 1–103. Available at: https://academicworks.cuny.edu/cc_etds_theses/40.

³⁸⁶ Gray (1996): p. 257.

³⁸⁷ Szilágyi, János Ede: *Water law*. University of Miskolc, Miskolc, 2013. pp. 215–229.

³⁸⁸ Water for Life Decade’ 2005–2015 declared by GA Resolution 58/217 of 23 December 2003. Available at: <https://www.unwater.org/news/water-life-decade-2005-2015>.

³⁸⁹ UNGA Resolution 64/292 *The human right to water and sanitation* 28 July 2010. p. 2. Section 1.

In 2002, the Council of Economic, Social and Cultural Rights recognised the right to water:

*“the human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights.”*³⁹⁰

The right to water is undoubtedly one of the most controversial human rights. Its concept takes several forms: the right to drinking water, the right to water, the right of access to sufficient water, and the right to clean water. Its classification as a generational right is also uncertain, as many people associate it with the rights to life and dignity, health, food, adequate quality of life and education, for the full enjoyment of which a precondition is the right to water.³⁹¹ Although the right to water is explicitly recognised in several international human rights conventions, it is not mentioned in the International Bill of Rights.³⁹² Also, a large number of soft law sources mention some aspects of the right to water, such as the Dublin Statement on Water and Sustainable Development from 1992³⁹³, the Recommendation of the Committee of Ministers to member states on the European Charter on Water Resources from 2001³⁹⁴ or the resolution of the United Nations Sub-Commission on the Promotion and Protection of Human Rights on the promotion of the realisation of the right to drinking water.³⁹⁵

³⁹⁰ Committee on Economic, Social and Cultural Rights, General Comment No. 15. E/C.12/2002/11 20 January 2003. p. 1. Section 1.

³⁹¹ International Conventions with explicit reference includes the following instruments. Convention on the Elimination of All Forms of Discrimination Against Women (Article 14, paragraph 2 (h)); Convention on the Rights of the Child (Article 24, paragraph 2 (c)); Geneva Convention relative to the Treatment of Prisoners of War (Articles 20, 26, 29, 46); Geneva Convention relative to the Treatment of Civilian Persons in Time of War (Articles 85, 89, 127); Additional Protocol I of 1977 (Articles 54, 55); Additional Protocol II of 1977 (Articles 5, 14).

³⁹² Raisz, Anikó: A vízhez való jog egyes aktuális kérdéseiről [Some current issues on the right to water]. In: Csák, Csilla (Ed.): *Jogtudományi tanulmányok a fenntartható természeti erőforrások témakörében* [Legal Studies on Sustainable Natural Resources] Miskolc, 2012, University of Miskolc, pp. 151–159.

³⁹³ Principle No. 1. “*Fresh water is a finite and vulnerable resource, essential to sustain life, development and the environment.*” Principle No. 2. “*Water development and management should be based on a participatory approach, involving users, planners and policy-makers at all levels.*”

³⁹⁴ CoE Committee of Ministers: Recommendation Rec(2001)14, 17 October 2001. Section 5. “*Everyone has the right to a sufficient quantity of water for his or her basic needs.*”

³⁹⁵ United Nations Sub-Commission on the Promotion and Protection of Human Rights: E/CN.4/Sub.2/RES/2001/2 10 August 2001.

The provision of safe drinking water was already included in the MDGs, then as sub-goal 7.C: “*halve, by 2015, the proportion of the population without sustainable access to safe drinking water and basic sanitation.*”³⁹⁶ As a result of the implementation of new policies, between 1990 and 2015, around 2.6 billion people have improved their access to safe drinking water, and 2.1 billion people have improved their sanitation.³⁹⁷ Given that today, 3 in 10 people lack access to safely treated drinking water services and 6 in 10 people lack access to adequate sanitation and hygiene facilities, a specific target for water and sanitation has been set under the SDGs. Goal 6 sets out a further six sub-targets to ensure that by 2030, everyone has access to the basic necessities of life.³⁹⁸ The outbreak of the coronavirus pandemic in 2020 highlighted the importance of the right to water, with regular handwashing and disinfection as an important means of limiting its spread. Furthermore, especially in developing and low-income countries, health facilities lack adequate water sources, affecting one in four systems worldwide.³⁹⁹

Concerning the right to water, ecocide would undoubtedly be an indirect option in the context of the protection of human rights. It is known that climate change has a significant negative impact on access to water, and more and more climate refugees are forced to migrate due to water scarcity. If we link ecocide to the fight against climate change, then it stands to reason that this legal concept could also contribute to guaranteeing the right to water. It is a different matter if the restriction of the right to water is implemented as a means, for example, to oppress and force specific indigenous communities to migrate. In this case, the violation of the right to water is an integral part of the crime of ecocide.

³⁹⁶ UN: Goal 7 Ensure Environmental Sustainability. Available at: <https://www.un.org/millenniumgoals/envIRON.shtml>.

³⁹⁷ Ibid.

³⁹⁸ UN: Goal 6 Ensure access to water and sanitation for all. Available at: <https://www.un.org/sustainabledevelopment/water-and-sanitation/>.

³⁹⁹ About this topic, see Donde, Oscar Omondi – Atoni, Evans – Muia, Anastasia Wairimu – Yillia, Paul T.: *COVID-19 pandemic: Water, sanitation and hygiene (WASH) as a critical control measure remains a major challenge in low-income countries*. Water Research, Vol. 191. 2021, p. 116793. (1–6.) DOI: <https://doi.org/10.1016/j.watres.2020.116793>.

6.2.3. Right to food

Despite all the efforts of the international community to ensure adequate food supplies, hunger, malnutrition, and famine have become common again, especially in conflict zones. There are several reasons for the failure to provide adequate food, including “*the disruption of agricultural activity, the deterioration of food-related economies and the deliberate undermining of access to food and restrictions on humanitarian assistance by parties to the conflict.*”⁴⁰⁰ Although the right to food is not explicitly mentioned in international humanitarian law, it is now accepted by the international community that intentionally causing famine and forced starvation are prohibited under international law. Thus, even in the absence of specific human rights or humanitarian law, existing sources of law can be interpreted in such a way as to establish the responsibility of those causing the starvation of the civilian population.⁴⁰¹ International humanitarian law also indirectly recognises the right to food by prohibiting the starvation of civilians.⁴⁰²

The right to food is one of the latest achievements of human rights and is becoming more widely recognised. It is also linked to other third-generation rights, most closely to the right to a safe and healthy environment, the right to water, and to state objectives such as safeguarding the interests of future generations.⁴⁰³ Based on Wernaart, within the framework of the UN, three pillars can be distinguished, which further developed the right to food after the Second World War: traditional and regional international conventions, the contribution of FAO and the work of the Special Rapporteur on the Right to Food.⁴⁰⁴ The right to food is fundamental in light of the fact that, after a decade of improvement, the number of hungry people is now rising again, affecting almost 700 million people. The eradication of hunger is already enshrined in the Millennium

⁴⁰⁰ Elver, Hilal: Normative and Legal Framework. Keynote speech at Armed Conflicts, Environment and Human Rights. In: *Armed Conflicts, Environment and Human Rights; International Panel Debate Proceedings and Lessons Learnt*. 8 June 2022 Geneva. pp. 13–14. Available at: <https://geneva-academy.ch/joomlatools-files/docman-files/Armed-Conflicts-Environment-and-Human-Rights.pdf>.

⁴⁰¹ Ibid.

⁴⁰² See Additional Protocol I of 1977 (Articles 54); Additional Protocol II of 1977 (Articles 14).

⁴⁰³ For a detailed analysis of the right to food, see Téglásiné Kovács, Júlia: *Az élelemből való jog társadalmi igénye és alkotmányjogi dogmatikája* [The Right to Food; its Social Need and its Constitutional Legal Dogmatics]. Ludovika, Budapest, 2020. p. 186.

⁴⁰⁴ Wernaart, Bart F. W.: *The Enforceability of the Human Right to Adequate Food*. Wageningen Academic Publishers, 2013. pp. 60–61.

Development Goals, and the SDGs targeting the eradication of hunger by 2030 include the primary commitment to eradicate hunger completely.⁴⁰⁵

In 1944, US President Roosevelt advocated the acceptance of the “*Economic Bill of Rights*”

*“We have come to the clear realization of the fact that true individual freedom cannot exist without economic security and independence. ‘Necessitous men are not free men.’ People who are hungry and out of jobs are the stuff of which dictatorships are made.”*⁴⁰⁶

A significant role in the history of the right to food has been played by organisations and programmes belonging to the UN family: the FAO (Food and Agriculture Organization of the United Nations) and the WFP (World Food Programme). The incorporation of the right to food in international conventions and the expansion of the classic human rights catalogues still continue to this day. However, it has to be noted that the mere possibility of access to food does not solve the problem of ‘quality hunger’. Qualitative hunger is when food is available in quantity but does not meet the nutritional requirements of a healthy diet. Therefore, the right to food has several components: availability, accessibility, adequacy and sustainability.⁴⁰⁷ As the Committee on Economic, Social and Cultural Rights has stated, the right to adequate food is realised when every man, woman and child, alone or in a community with others, has physical and economic access to adequate food or means of obtaining it. Moreover:

*“the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights enshrined in the International Bill of Human Rights. It is also inseparable from social justice.”*⁴⁰⁸

Several international instruments ensure the right to food, including traditional human rights conventions and soft law documents, including

⁴⁰⁵ Action against hunger. Available at: <https://www.actionagainsthunger.org/the-hunger-crisis/world-hunger-facts/>.

⁴⁰⁶ Bill of Rights Institute: Primary Source: Excerpts from the State of the Union Address by US President F.D. Roosevelt (1944). Available at: <https://billofrightsinstitute.org/activities/handout-b-excerpts-from-the-state-of-the-union-address-by-fdr>.

⁴⁰⁷ OHCHR: The Right to Food. Available at: <https://www.ohchr.org/en/food>.

⁴⁰⁸ Committee on Economic, Social and Cultural Rights: General Comment No. 12, The right to adequate food (art. 11), 12 May 1999 E/C.12/1999/5.

the guidelines issued by FAO.⁴⁰⁹ The Universal Declaration of Human Rights⁴¹⁰ is one of the most famous human rights instruments, and even though it was accepted by the UNGA in the form of a non-binding resolution, several rights gained importance in international custom and were strengthened by other binding conventions. In Article 25, the UDHR states that:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

The International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966, established a difference between the right to adequate food and the freedom from hunger in Article 11:

“1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, [...]”

Among the third generation of human rights, the right to food has a more developed legal background and is explicitly reflected in several international legal instruments. However, the enforceability of the right and its content are still considered uncertain today. The right to food and the right to

⁴⁰⁹ The following instruments are important references on the right to food: 1989 Convention on the Rights of Child (Article 24 (2)); 1981 International Code of Marketing of Breast-milk Substitutes; 1979 Convention on the Elimination of All Forms of Discrimination Against Women (Article 12 (2)); 1993 Declaration on the Elimination of Violence Against women; 1995 Beijing Platform for Action Ensure Women's Rights; ILO conventions 87, 98, 169; UN Declaration on Rights of Indigenous People; 2007 The Convention on the Rights of Persons with Disabilities (Article 28);

⁴¹⁰ UNGA: Resolution 217 A 10 December 1948 International Bill of Human Rights.

water are often linked, as the provision of adequate, clean and accessible water is an essential element in guaranteeing food security. As a result, right to food and water are connected to each other and have to be supported mutually to contribute to an adequate standard of living. As I have already emphasized in the case of the right to water, legal recognition of ecocide can establish a basis for accountability, both directly and indirectly, for holding violators accountable.

6.3. The applicability of the human rights approach to the ecocide concept

Saad Alfarargi, Special Rapporteur on the right to development, “*warned that climate change was a global human rights threat multiplier*.”⁴¹¹ The legal acceptance of ecocide is growing, but there is a serious debate about whether it can be the fifth international crime. In this section, I would like to differentiate between the criminal law approach and the human rights approach in relation to ecocide. Why is it beneficial if ecocide were to find its way into international law through the human rights approach and not as an international crime? As already highlighted, there is a rapidly evolving relationship between human rights, climate change and the environment, and human rights in climate litigation have become extremely important. Accepting the right to a healthy environment has paralleled the growing attention on ecocide legislation. In 2022, the General Assembly declared that the right to a clean, healthy, and sustainable environment is related to other rights and existing international law. It affirmed that its “*promotion requires the full implementation*” of the multilateral environmental agreements “*under the principles of international environmental law*.”⁴¹² The proposal of ecocide calls for the development of international criminal law to penalise wide-scale environmental destruction. Meanwhile, the growing attention on the right to a healthy environment presents another method, the human rights approach. These territories of international law are quite far from each other. Still, there is a possibility that the solution for the incorporation of ecocide into the body of international law will be through human rights law and not criminal law.⁴¹³

⁴¹¹ OHCHR: Press Releases 17 September 2021. Available at: <https://www.ohchr.org/en/press-releases/2021/09/special-rapporteur-right-development-human-rights-council-climate-change>.

⁴¹² Res. A/76/L.75 28

⁴¹³ Mwanza, Rosemary: *Symposium on UN Recognition of the human right to a healthy environment. The right to a healthy environment as a catalyst for the codification of the crime*

As a definition, “a human rights-based approach is a conceptual framework normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyse obligations, inequalities and vulnerabilities and to redress discriminatory practices and unjust distributions of power that impede progress and undercut human rights.”⁴¹⁴ Andreas von Arnould and Jens Theilen identified five functions of human rights rhetoric: an appellative function, a contesting function, a connecting function, a triggering function and a juris-generative function. The appellative function draws attention to environmental harm, such as ecocide. The contesting function emphasises the appellative function, which serves as a critique of present injustices. The connecting function brings together national, regional and international human rights advocates and unifies them globally. Furthermore, the human rights approach triggers the institutions to fight injustices and respond to violations. Finally, it supports “discursive practices” and grassroots levels beyond the formal law-making of institutions.⁴¹⁵

International criminal law establishes the legal responsibility of individual persons for international crimes. International human rights law is relevant to international criminal law from several aspects. For example, human rights law defines international fair-trial standards and the principles of legality and culpability.⁴¹⁶ Whether it is the criminal law approach or the human rights approach, the keyword is accountability. Who and under which legal norms can be held accountable for severe environmental harm or destruction? The supporters of ecocide legislation share the strong belief that ecocide would serve as a legal basis for establishing responsibility for those who breach climate laws. Meanwhile, it is hard to establish the responsibility of large emitters because of the lack of jurisdiction or hard law. A small but growing number of countries included ecocide legislation in national law, including some post-soviet countries (such as Russia) and, more recently, France.⁴¹⁷ In 2021, France passed the “*Climate & Resilience Act*” under Article 296 of the new law

of ecocide. AJIL Unbound, Vol. 117. 2023, p. 179. DOI: <https://doi:10.1017/aju.2023.29>.

⁴¹⁴ OHCHR: *Applying a human rights-based approach to climate change negotiations, policies and measures*. pp. 1–2. Available at: <https://www.ohchr.org/Documents/Issues/ClimateChange/InfoNoteHRBA.pdf>.

⁴¹⁵ von Arnould, A – Theilen, JT: Rhetoric of Rights. In: von Arnould, A – von der Decken, K – Susi, M (Eds.): *The Cambridge Handbook of New Human Rights: Recognition, Novelty, Rhetoric*. Cambridge: Cambridge University Press, 2020. pp. 34–50.

⁴¹⁶ Brown, Bartman: International Criminal Law: Nature, Origins and a Few Key Issues. In: Brown, Bartman (eds): *Research Handbook on International Criminal Law*. Edward Elgar, 2011, pp. 3–16.

⁴¹⁷ Ecocide / serious environmental crimes in national jurisdictions.

to report back to parliament within one year on “*its action in favour of the recognition of ecocide as a crime which can be tried by international criminal courts.*”⁴¹⁸

6.4. Marginalised groups and ecocide

Marginalised groups need special attention in the human rights system because their vulnerability requires even stronger measures to protect their fundamental rights. Environmental impacts or harms particularly hinder the enjoyment of the rights of vulnerable groups. Of course, a comprehensive analysis of marginalised groups and the protection of their human rights cannot be the objective of this book chapter.⁴¹⁹ However, our starting point is that environmental harm and the negative impacts of climate change make these groups even more vulnerable. In this respect, we need to determine the impact that ecocide can have on the protection of the rights of these groups. I will address the protection of Indigenous communities in a separate chapter.

6.4.1. The definition and special needs of marginalised groups

Although human rights are universal, derived from and inseparable from human dignity, certain groups are even more vulnerable or in need of protection because of specific characteristics. There is no consensus as to who should be considered as a marginalised group. Still, according to the literature, certain individuals or groups of individuals are considered to fall into this category. In other words, they are considered vulnerable or disadvantaged people. Migrants, refugees and internally displaced persons; minorities and Indigenous communities; women and girls; persons in detention;⁴²⁰ and persons with disabilities are some of the groups that may be considered marginalised. Of course, other communities may be added to the list, including, for example, individuals deprived of their liberty who are a “*discrete and insular minority.*” The *Icelandic Human Rights*

⁴¹⁸ Loi no 2021-1104 du 22 août 2021 portant lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets, Journal officiel électronique authentifié n° 0196 du 24/08/2021.

⁴¹⁹ On the topic of marginalised groups, a great collection of perspectives was collected by Weissbrodt, David – Rumsey, Mary (Eds.): *Vulnerable and Marginalised Groups and Human Rights*. Human Rights Law Series, Book 1, Edward Elgar Publishing, 2011, 736 p.

⁴²⁰ For example, the detention of asylum seekers.

Centre identified twelve vulnerable groups. In addition to those already mentioned, this list includes children, stateless persons, elderly persons, HIV-positive persons and AIDS victims, Roma/Gypsies/Sinti people and sexual minorities. Of particular interest is the way in which the rights of marginalised groups are protected in the practice of the various human rights fora. In recent years, the UN Committee on Economic, Social and Cultural Rights has paid special attention to the rights of vulnerable and disadvantaged people who often have to face the violation of civil and political rights, but even more commonly, the violation of social, cultural and economic rights.⁴²¹ The Report of the IPCC in 2022 also highlighted that marginalised groups (such as Indigenous peoples, ethnic minorities and low-income households) are even more vulnerable to the adverse effects of climate change.⁴²²

Today, several international human rights conventions have been adopted, which lay down specific rules in addition to general treaties for the protection of the rights of marginalised groups. These international conventions include The International Convention on the Rights of Persons with Disabilities⁴²³, the International Covenant on the Elimination of All Forms of Racial Discrimination⁴²⁴, the Convention on the Elimination of All Forms of Discrimination Against Women⁴²⁵, the Convention on the Rights of the Child⁴²⁶, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families⁴²⁷. The human rights bodies, such as the UN Human Rights Council (former Commission), appointed special rapporteurs and independent experts to address the issue of marginalised groups.⁴²⁸

⁴²¹ Chapman, Audrey R. – Carbonetti, Benjamin: *Human Rights Protections for Vulnerable and Disadvantaged Groups: The Contributions of the UN Committee on Economic, Social and Cultural Rights*. Human Rights Quarterly, Vol. 33. No. 3, August 2011, pp. 682–685.

⁴²² IPCC: Climate Change 2022: Impacts, Adaptation and Vulnerability. Working Group II contribution to the IPCC Sixth Assessment Report. Available at: <https://www.ipcc.ch/report/ar6/wg2/>.

⁴²³ The Convention was adopted on 13 December 2006 during the sixty-first session of the General Assembly by resolution A/RES/61/106. New York, 2006 (2008) UNTS Vol. 2515, p. 3.

⁴²⁴ The Convention was adopted by the General Assembly of the United Nations in resolution 2106 (XX)2 of 21. New York, 1966 (1969) UNTS Vol. 660, p. 195.

⁴²⁵ New York, 1979 (1981) UNTS Vol. 1249, p. 13.

⁴²⁶ The Convention was adopted by resolution 44/251 at the Forty-fourth session of the General Assembly of the United Nations. New York, 1989 (1990) UNTS Vol. 1577, p. 3.

⁴²⁷ The Convention was adopted by Resolution A/RES/45/1581 at the forty-fifth session of the General Assembly of the United Nations. New York, UNTS Vol. 2220, p. 3.

⁴²⁸ UN Human Rights Council: Special Procedures of the Human Rights Council. Available at: <https://www.ohchr.org/en/special-procedures-human-rights-council>.

Although marginalised groups may appear to be homogeneous from the outside, as their members are considered vulnerable based on the same characteristics, on closer examination, significant differences can be identified between them. For example, when looking at the group of ‘women and girls’ and the total population of the Earth, we find significant differences between them in terms of social status, opportunities, and income.

6.4.2. Children’s rights and ecocide

In the case of children, the question is whether children themselves as a group are considered marginalised or only children belonging to a particular social group whose vulnerability stems from some characteristic. The latter could include children born into poverty and income disparity and aboriginal or refugee children. “*Marginalized children are defined as children who are outside and peripheralised from the mainstream group or centre of the society. They have little control of their lives, little resources available to them and are subjected to stigmatisation with negative public attitudes.*”⁴²⁹ Children who are already vulnerable compared to their peers are even more exposed to environmental destruction, and they are even more sensitive to adverse environmental impacts such as water scarcity and food crises caused by droughts. It is crucial to know whether children have the right to a healthy environment and which human rights instruments could serve as a basis for the protection of environmental rights in relation to children. Increasing climate litigation symbolises the intensifying attention on intergenerational equity, the rights of children and environmental rights. However, the lack of binding instruments concerning the environmental rights of children causes severe “*uncertainty.*” However, the general principles of children’s rights are applicable, including the “*best interests of the child*” that are also enshrined in the Convention on the Rights of Children.⁴³⁰

It is also a question of who can be considered a child. In general, and legally, a child is a person not yet of the age of majority. Based on the Convention on the Rights of the Child, a child is every human being below the age of eighteen years unless, under the law applicable to the

⁴²⁹ Taib, Fahisham: *Invisible, Vulnerable and Marginalized Children in Malaysia*. Malaysian Journal of Paediatrics and Child Health, Vol. 19. December 2013, p. 1.

⁴³⁰ Kecskés, Gábor – Lux, Ágnes: There is No Plan(Et) B - Environmental “Crossroads” of Children’s Rights”. Hungarian Journal of Legal Studies Vol. 64. No. 1. 2023, pp. 25–26. DOI: 10.1556/2052.2023.00440.

child, “majority is attained earlier.”⁴³¹ As childhood is essentially a social issue, there is no uniform legal position on either the beginning of childhood or the age of majority. The definition of childhood has also been the subject of heated debate during the negotiation of the International Convention on the Rights of the Child. The final position and the text of the Convention ended up being “*prescriptive, but not inflexible*” on the age of the child. Thus, if social customs or religious considerations influence the age of majority in a given state, these can be taken into account, even under the rules of the Convention.⁴³² However, States Parties are expected to indicate how all children benefit from protection and enjoy their rights under the Convention up to the age of 18 years and “*urges the State party to intensify its ongoing dialogue with traditional and religious leaders and state authorities to enhance the understanding of the importance of conceptualizing persons under the age of 18 as children with special rights and needs guaranteed under the Convention.*”⁴³³

There is a growing focus on children and the environment, and this context increasingly appears in climate litigation. Edith Brown Weiss introduced the term “intergenerational equity” in 1989,⁴³⁴ and since then, we all know that “*sustainable development relies on a commitment to equity with future generations.*”⁴³⁵ The same author identified three main principles regarding intergenerational equity. Firstly, it preserves the diversity of natural and cultural resources. Secondly, it improves the quality of life and, finally, ensures equitable access to the heritage of past generations for future generations.⁴³⁶ It is also true that we do not know the exact needs of future generations: “*we cannot with great certainty ascertain the*

⁴³¹ Article 1 “*For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.*”

⁴³² Lansdown, Gerison – Vaghri, Ziba: Article 1: Definition of a Child. In: Vaghri, Ziba – Zermatten, Jean – Lansdown, Gerison – Ruggiero, Roberta (Eds.): *Monitoring State Compliance with the UN Convention on the Rights of the Child; An Analysis of Attributes*. Springer Cham, 2022. DOI: <https://doi.org/10.1007/978-3-030-84647-3>. pp. 407–408.

⁴³³ UN Committee on the Rights of the Child: Concluding observations: Nigeria, 21 June 2010, CRC/C/NGA/CO/3–4, para 27.

⁴³⁴ Brown Weiss, Edith: *Intergenerational Equity*. Toward an International Legal Framework. 1989.

⁴³⁵ Brown Weiss, Edith: *In Fairness to Future Generations and Sustainable Development*. American University Journal of International Law and Policy. Vol. 8. No. 1. Fall 1992, p. 19.

⁴³⁶ Brown Weiss, Edith: *Intergenerational Fairness and rights of Future generations – three principles of inter-generational equity form the basis of intergenerational obligations and rights*. Generational Justice, No. 2. 2002, p. 6.

*precise needs and preferences of future generations, we could in devising policies begin at the very least by taking into account two considerations: minimizing harm and doing that which benefits both present and future generations.”*⁴³⁷

There is ongoing debate concerning the rights of future generations, including the core question of whether it is even possible to guarantee rights for the children yet to be born. So, some scholars recommend approaching this question from the point of view of what we can do to ensure that future generations have the right conditions, and how far today's society can go to achieve this.⁴³⁸ In my view, the latter approach is very well suited to linking ecocide and the rights of future generations, as ecocide provides an opportunity to hold accountable those who are responsible for the most serious environmental degradation, thus ensuring a better, more liveable, and sustainable future for upcoming generations.

Already existing human rights bodies increasingly often have to deal with petitions of environmental concern. In 2019, sixteen children filed a petition alleging that Argentina, Brazil, France, Germany and Turkey violated their rights under the United Nations Convention on the Rights of the Child⁴³⁹ by making insufficient reduction of greenhouse gases and failing to encourage the world's biggest emitters to curb carbon pollution. The UN Committee on the Rights of the Child affirmed that a state party to the Convention could be held responsible for the negative impact of its carbon emissions on children's rights, both within and outside its territory, and countries have extraterritorial responsibilities related to carbon pollution.⁴⁴⁰ The Committee applied the method established by the Inter-American Court of Human Rights (IACtHR) to decide the jurisdiction of the body.⁴⁴¹

⁴³⁷ Report of the Secretary General: Intergenerational solidarity and the needs of future generations. A/68/32215 August 2013. p. 7. para 25.

⁴³⁸ Sántáné Szakály, Zsuzsanna: *Az intergenerációs igazságosság megjelenése alkotmányi szinten* [The emergence of intergenerational justice at the constitutional level]. Pro Futuro, Vol. 7. No. 2. 2017, p. 51. DOI: <https://doi.org/10.26521/Profuturo/2017/2/4762>.

⁴³⁹ Convention on the Rights of the Child 1989 (1990) UNTS Vol. 1577, p. 3.

⁴⁴⁰ OHCHR: *UN Child Rights Committee rules that countries bear cross-border responsibility for harmful impact of climate change*. Press releases, 11 October 2021. Available at: <https://www.ohchr.org/en/press-releases/2021/10/un-child-rights-committee-rules-countries-bear-cross-border-responsibility?LangID=E%26NewsID=27644>.

⁴⁴¹ Sacchi, et al. v. Argentina, et al. Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 104/2019.

CHAPTER 7.

ECOCIDE AND INDIGENOUS COMMUNITIES

“But the man would not be a man if he did not try to preserve nature in its primaeval originality, wherever possible, even in the age of outstanding technical achievements. To preserve the animals and plants without which, let us be honest, life would be bleak even in the most brilliant technical conditions.”⁴⁴²

As in the introductory thought I have already highlighted, nowadays, communities living in symbiosis with their environment have been replaced mainly by urbanised societies. Urbanisation itself has a negative impact on the environment, including concentrated air pollution and waste production and the alteration of the natural environment for industrialisation and urban development. Again, the members of a modern society accept environmental harm as a necessary element of modern life. Exploitation of the natural environment has always been a matter of course for people and communities. However, Indigenous communities have exploited the resources that nature has to offer on the basis of the principles of sustainability. The problem began when “*taking and harvesting*” exceeded the sustainable level to the extent that the living world could no longer reproduce itself. In economic terms, the demand became more significant than the supply. However, while a shortage on a production line can be replaced within a few months or even a few days, once a living

⁴⁴² Schmidt, Egon: *Madarakról mindenkinek* [About birds for all]. Kossuth, Budapest, 2020. p. 201.

The original language of the quote is Hungarian (authors' own translation): „Az ember azonban nem lenne ember, ha nem igyekezne a nagy technikai vívmányok korszakában is megőrizni – ahol lehet – a természetet a maga ősi eredetiségében. Megőrizni az állatokat és növényeket, amelyek nélkül – valljuk be őszintén – a legragyogóbb technikai feltételek mellett is sivár lenne az életünk.”

organism disappears from the Earth, it never returns. We exploit natural resources with the global goal of energy security. Meanwhile, there is a growing knowledge of how these tactics are destroying our natural environment. Due to the climate crisis, we have to rethink our means of living and supply.

Before establishing and drawing conclusions about Indigenous peoples, it is essential to define the terms used in this chapter. It is not the purpose of this chapter to describe and take a position on all the definitional dilemmas surrounding the topic, but defining the main conceptual frameworks is essential to understanding the harms to Indigenous peoples and communities in the context of ecocide. In recent years, Indigenous communities have shown significant support for ecocide, its legalisation and its implementation by the states. Indigenous peoples' positive attitude towards ecocide is understandable, as their communities, traditions and lands are under constant threat. Referring to Indigenous communities is a sensitive issue, as the term sometimes holds a negative connotation. As a result, alternatives are applied, such as tribes, first peoples/nations, aboriginals or ethnic groups.

Indigenous communities hold valuable and irreplaceable knowledge about the sustainable use of natural resources, nature in general and the interrelatedness of different natural elements. Due to the current socioeconomic situation that was established by colonisation and historical exclusion, Indigenous communities are considered marginalised and are responsible for only around five per cent of global pollution; still, more than fifteen per cent of communities fall within the extremely poor category.⁴⁴³ The environmental practices of states harm the land of Indigenous communities, and these alterations affect not just the state of the natural environment but also the traditional ways of the Indigenous communities, which have been living in sensitive harmony with nature for generations. The aforementioned harmful activities include oil and gas extraction and development, causing toxic oil spills, water contamination and the loss of hunting grounds. Another issue is large-scale industrial mining and local artisanal small-scale mining, which are leading causes of the pollution of Indigenous land. Furthermore, toxic waste dumping and radioactive contamination are also core problems. The latter is often the heritage of nuclear tests conducted in the 1960s but also accidents, including the Chernobyl fallout. Agricultural areas are polluted by pesticides, usually due to long-haul air transport and

⁴⁴³ United Nations Permanent Forum on Indigenous Issues: *State of the world's indigenous peoples; Indigenous people's access to health services*. New York, 2016. p. 200.

biological accumulation. Last but not least, industrial development in general adversely affects the land and practices of Indigenous communities, including long-distance air pollution.⁴⁴⁴

7.1. The definition of Indigenous people and communities

The issue of Indigenous communities is crucial, also based on the number of people affected since it is estimated that more than 370 million Indigenous people are spread across 70 countries worldwide.⁴⁴⁵ Indigenous communities practice unique traditions and have “*social, cultural, economic and political characteristics that are distinct from those of the dominant societies in which they live.*” According to the accepted definition, Indigenous people are the descendants of those who inhabited a country or a geographical region when people of different cultures or ethnic origins arrived. Although there is no universally accepted definition of Indigenous communities, unique characteristics have been identified that usually describe the main features of such groups. These special characteristics appear in the UN system and also in other sources, including international conventions and soft law documents. These features include self-identification at the individual and community levels; historical continuity; strong connection with the community and the territory; distinct traditions, language, belief, social, economic and political systems; and the willingness to maintain “*ancestral environments and systems*”. Finally, Indigenous communities are the non-dominant groups in the society in which they live.⁴⁴⁶

A lively discourse on Indigenous communities began in the 1980s, particularly in relation to their rights. The conceptual definition of Indigenous communities was proposed by *Jose Martinez Cobo*, who was the special rapporteur of the sub-commission of the Working Group in

⁴⁴⁴ An exceptional research project collected the causes of environmental pollution harming Indigenous communities, their affects and the role of Indigenous communities “*to prevent, control, limit, and abate pollution from local to global scales. Indigenous peoples experience large burdens of environmental pollution*”. Fernández-Llamazares, Á – Garteizgoeascoa, M – Basu, N – Brondizio, ES – Cabeza, M – Martínez-Alier, J – McElwee, P – Reyes-García, V.: *A State-of-the-Art Review of Indigenous Peoples and Environmental Pollution*. Integrated Environmental Assess Management, Vol. 16. No. 3. May 2016, pp. 324–341. DOI: 10.1002/ieam.4239.

⁴⁴⁵ UN Permanent Forum on Indigenous Issues: Who are indigenous peoples? Factsheet, pp. 1–2. Available at: https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf.

⁴⁴⁶ Ibid.

Indigenous Populations.⁴⁴⁷ The working group was set up essentially within the framework of the Commission on Prevention of Discrimination and Protection of Minorities. Based on the definition of Indigenous peoples:

*“Indigenous populations are composed of the existing descendants of the peoples who inhabited the present territory of a country wholly or partially at the time when persons of a different culture or ethnic origin arrived there from other parts of the world, overcame them and, by conquest, settlement or other means, reduced them to a non-dominant or colonial condition; who today live more in conformity with their particular social, economic and cultural customs and traditions than with the institutions of the country of which they now form part, under a State structure which incorporates mainly the national, social and cultural characteristics of other segments of the population which are predominant.”*⁴⁴⁸

The concept of Indigenous communities has been surrounded by uncertainty. Often, within a state, different social factors have defined what is considered “*Indigenous*.” Furthermore, various definitions have been created even within the government sector and across different branches of law.

In his work, Cobo pointed out the difficulties in defining the concept of indigenous communities:

*“The notions with reference to which such groups are classified are so flexible and varied that there are often discrepancies in statistical data or estimates within a single country, and useful comparisons between one country and another are impossible. Different and often contradictory criteria tend to be used by administrators, lawyers and sociologists as a basis for their definition, such as the colour of the skin, language, customs, tribal conditions and living standards. Every country has tackled the problem of definition in its own way, according to its own traditions, history, social organization and policies.”*⁴⁴⁹

In Cobo’s view, Indigenous communities are seen as marginalised or isolated groups. An important argument in support of this claim is that

⁴⁴⁷ See Cobo, Jose Martinez: *The Study of the Problem of Discrimination against Indigenous Populations*, 1987, E/CN.4/Sub.2/1986/7.

⁴⁴⁸ Cobo, Jose Martinez: Study of the problem of discrimination against indigenous populations: preliminary report. 1972, E/CN.4/Sub.2/L.566 p. 10. para 34.

⁴⁴⁹ Cruz, Hernfin Santa: Special study of racial discrimination in the political, economic, social and cultural spheres. 1967, E/CN.4/SUB.2/276.

Indigenous people are descendants of groups that were already in the country when residents of other cultures or ethnic origins arrived. Furthermore, because of their isolation from different groups in the country's population, they have preserved almost intact the customs and traditions of their ancestors, which are similar to those described as Indigenous. Finally, they are subject, albeit only formally, to a state structure that incorporates national, social and cultural characteristics alien to their own.⁴⁵⁰

The International Labour Organisation (ILO) is a specialised agency of the United Nations. Established in 1919, it has been one of the oldest members of the UN Family. The ILO has been engaged with “*Indigenous and tribal people*” since the 1920s. Within the frames of the organisation, several international instruments have been accepted concerning Indigenous and tribal people, including the only convention in force exclusively sentenced to the rights of such communities and people.⁴⁵¹ The broader working agenda of the ILO, such as the ILO's Decent Work Agenda, also contains elements that are useful for the empowerment of Indigenous people. These issues include gender equality and non-discrimination, which usually occurs towards the members of Indigenous communities.⁴⁵² The first version of the Indigenous and Tribal Populations Convention (No. 107) was adopted in 1957.⁴⁵³ The Convention also introduced the term “*semi-tribal*”, which “*includes groups and persons who, although they are in the process of losing their tribal characteristics, are not yet integrated into the national community*”.⁴⁵⁴ Regarding Indigenous and tribal populations, the ILO adopted a recommendation in the same year that highlighted that similar standards were accepted within the frames of other organisations, such as the Food and Agriculture Organisation of the United Nations, the United Nations Educational, Scientific and Cultural Organisation and the World Health Organisation.⁴⁵⁵ The organisations

⁴⁵⁰ Cobo (1972): p. 13, para. 45.

⁴⁵¹ ILO: *Indigenous and tribal people*. Available at: <https://www.ilo.org/topics-and-sectors/indigenous-and-tribal-peoples>.

⁴⁵² The Decent Work Agenda of the International Labour Organisation strongly relates to SDG8 (decent work and economic growth), in details available at https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@europe/@ro-geneva/@ilo-lisbon/documents/event/wcms_667247.pdf.

⁴⁵³ Convention (No.107) concerning the protection and integration of indigenous and other tribal and semi-tribal populations in independent countries, adopted in Geneva, at the 40th ILC session 1957 (1959) UNTS Vol. 328, p. 247.

⁴⁵⁴ Convention No.107. Article 1, Para 2.

⁴⁵⁵ ILO: R104, *Indigenous and Tribal Populations Recommendation*, 1957 (No. 104), 40th ILC session.

mentioned above had been working as part of the “*Andean Programme*” launched in 1953. The programme’s work was based on the results of the “*Beaglehole*” mission, which task was to study the living and working conditions of the “Indigenous” peoples and travelled to several countries, such as Peru, Bolivia, Ecuador, and later Colombia, Chile, Argentina and Venezuela.⁴⁵⁶ The relevant ILO convention focusing on Indigenous and tribal peoples’ rights in force was adopted in 1989, entered into force in 1991, and was ratified by 24 State parties.⁴⁵⁷

7.2. Ethnocide, terricide, ecocide and genocide

One of the main differences between Western cultures and Indigenous traditions is that the latter considers humanity as an integral component of the ecosystem, whereas the ‘modern’ epistemology is based on ‘Enlightenment’ and considers nature as a separate object and natural resources are there only to serve the benefit of humanity.⁴⁵⁸ This is what the literature calls an “*inherited dualism that runs deep in Western cultures*”.⁴⁵⁹

Several different definitions appeared in the context of environmental destruction; some of them were established by and in the context of indigenous communities. Terricide was coined by *Mapuche* women as “*the killing, not only of tangible ecosystems and the people who inhabit them, but also of all the forces that regulate life on earth – what we call the perceptible ecosystem*”.⁴⁶⁰ Terricide connects historical and present oppressions: indigenous genocide, femicide, culturicide, epistemicide, transfemicide, transvesticide and ecocide.⁴⁶¹ Terricide means the destruction and harm of all forms of life, including tangible ecosystems. It also refers to the killing or socio-economic harm of people and the destruction of perceptible

⁴⁵⁶ ILO: *ILO activities in the post-war world*, (Part 1: 1946-1959), 1953. Launch of the Andean Programme. Available at: <https://webapps.ilo.org/static/english/lib/century/content/1953.htm>.

⁴⁵⁷ Convention (No. 169) concerning indigenous and tribal peoples in independent countries, adopted 1989 (1991) UNTS Vol. 1650.

⁴⁵⁸ About nature-environment-humanity context see the relevant chapter of this book.

⁴⁵⁹ Haraway, D.: *Situated knowledges: the science question in feminism and the privilege of partial perspective*. Feminist Studies, Vol. 14. No. 3. 1988, pp. 575–599. DOI:10.2307/3178066

⁴⁶⁰ Definition of the MIBV Movement, 2023. The Movimiento de Mujeres y Diversidades Indígenas por el Buen Vivir

⁴⁶¹ STOP Ecocide: Argentina: enough of terricide! 3 February. Available at: <https://www.stopecocide.earth/guest-blog/argentina-enough-of-terricide>.

or spiritual ecosystems.⁴⁶² Terricide strengthens ecocide in several manners. Firstly, it supports the already established ecocide-genocide nexus, and secondly, it “*decolonises prevailing understanding of ecocide*” but also includes marginal dimensions, such as culture and knowledge.⁴⁶³

The concept of ethnocide is increasingly applied, but its meaning is uncertain. The word has its origins in the Greek word for people (*ethnos*) and the Latin word for kill (*cide*). In the literature, “*ethnocide is the elimination of the culture of a national or ethnic group with the aim of destroying all or part of the group. It is expressed as the unconditional subordination of one national or ethnic group to another, with the intention of eliminating the group.*”⁴⁶⁴ Ethnocide is a slow process in terms of its time horizon, and for some groups, such as the Canadian Indians, it is a process that spans centuries unless the changes are due to changes in statehood. In the latter case, ethnocide may occur more rapidly on a historical scale.⁴⁶⁵ Ethnocide can be equated with cultural genocide in some views,⁴⁶⁶ but others argue that there is a difference between the two concepts. In particular, certain conceptual limitations can be identified in comparison to the original Lemkinian definition of genocide, with ethnocide being considered a less serious act.

In coining the term genocide, *Lemkin* himself noted that genocide could, in fact, be called ethnocide since it would express the same idea.⁴⁶⁷ *Lemkin* also distinguished between three different types of genocide. Firstly, physical genocide (destruction of individuals); secondly, biological genocide (prevention of births); and finally, cultural genocide (brutal destruction of the specific characteristics of the group). It is, therefore, particularly interesting that *Lemkin*, in his original and already cited work, equates ethnocide with the concept of genocide.

⁴⁶² Habersnag, Anja: *Tackling terricide, not (only) ecocide: further exploring the nexus between social-ecological destruction*. Globalizations, Vol. 22. No. 2. 2024, p. 324. DOI: <https://doi.org/10.1080/14747731.2024.2400002>.

⁴⁶³ Ibid.

⁴⁶⁴ Gulyás, Éva: *Etnocídium. Tisztázó észrevételek egy gyakran használt fogalomhoz* [Ethnocide. Clarifying remarks on an often used concept]. Kisebbségkutatás, Vol. 27. No. 4. 2018, p. 202.

⁴⁶⁵ Ibid.

⁴⁶⁶ See Gulyás (2018) with the original reference to Mirics, Károly: *Az etnocídium kulturális genocídium, a kulturális genocídium pedig a népirtás egyik formája* (Ethnocide is cultural genocide, and the cultural genocide is a form of genocide). Novi Sad, Fórum Publishing, 1993, p. 51.

⁴⁶⁷ Lemkin, Raphaël: *Axis rule in occupied Europe: laws of occupation, analysis of government, proposals for redress*. Carnegie Endowment for International Peace, Division of International Law, Washington, 1st Edition, 1944, p. 79, Footnote #1.

The draft Genocide Convention adopted in 1947 also included a prohibition of cultural genocide and its five forms, as follows:

- “(a) Forced transfer of children to another human group.*
- (b) Forced and systematic exile of individuals representing the culture of the group.*
- (c) Prohibition of the use of the national language even in private intercourse*
- (d) Systematic destruction of books printed in the national language, or of religious works, or prohibition of new publications.*
- (e) Systematic destruction of historical or religious monuments or their diversion to alien uses, destruction or dispersion of documents and objects of historical, artistic, or religious value, and of objects used in religious worship.”⁴⁶⁸*

Forced assimilation and ethnocide cover different processes, even if the means used are similar.

Traditional Indigenous communities are based on the “*know and see*” way of interacting with the natural environment. The link between the need to protect nature and Indigenous communities is indisputable. Compared to Western perceptions, Indigenous communities have a very different approach to nature and its living and non-living elements. Criminological-ontological research on four Indigenous communities in Colombia has confirmed these preliminary assumptions. The researchers’ findings suggest that the close relationship of Indigenous communities with nature can be approached from two directions. On the one hand, they conceive of human well-being as being based on the existence and actions of nature and its components and, on the other hand, of nature as a whole as sacred. The observed features of Indigenous environmental ontologies stand in stark contrast to the dominant modernist, Western environmental ontology in at least three main respects. These differences include the fact that the Western conception is anthropocentric or, in other words, human-centred. Furthermore, it sharply separates nature from spirituality, viewing it as a kind of machine. Finally, it rejects mysticism, which means the belief that life has a hidden meaning or basis.

⁴⁶⁸ UN Secretary-General: Draft Convention on the Crime of Genocide E/447, 1947, pp. 25-26.

The Western, so-called modern view also distances the environment from man as a justification for environmentally destructive behaviour, while indigenous ontologies encourage respect for the inanimate elements of nature.⁴⁶⁹

Ethnocide, genocide and ecocide threaten the very survival of memory and culture, which are essential elements of Indigenous existence. The destruction of Indigenous environmental ontologies not only constitutes a violation of human rights, which also contributes to the survival of Indigenous traditions, but also can be considered a green crime. Traditions are replaced by the customs of consumer society. The changes within Indigenous communities have a significant impact on their attitudes towards the environment and on the survival of their culture. Young people in these communities spend more time and attention earning money, often engaging in environmentally destructive activities, such as working in mines. As a result, less attention is being paid to traditions that have understood humans as an integral part of the ecosystem. Many of today's social dynamics threaten the survival of Indigenous communities. These include cultural genocide, which leads to the realisation of ecocide.⁴⁷⁰

Genocide against Indigenous communities was not always motivated by malicious intent, but as *Friedemann* pointed out in his study from 1975, the education and conversion programmes mediated by “*well-meaning outsiders*” were intended to “*civilise*” Indigenous communities. These practices are slowly but surely triggering an ‘erosion’ within Indigenous communities, pushing people in the direction that outsiders believe the individuals who make up indigenous communities should be.⁴⁷¹ Based on Crook and Short, ecologically induced genocide means

⁴⁶⁹ Goyes, David Rodríguez –Abaibira, Mireya Astroina – Baicué, Pablo – Cuchimba, Angie – Ñeñetofe, Deisy Tatiana Ramos – Sollund, Ragnhild – South, Nigel – Wyatt, Tanya: *Southern Green Cultural Criminology and Environmental Crime Prevention: Representations of Nature Within Four Colombian Indigenous Communities*. Critical Criminology, Vol. 29. 2021, pp. 469–485. DOI: <https://doi.org/10.1007/s10612-021-09582-0>.

⁴⁷⁰ Goyes, David Rodríguez –South, Nigel – Abaibira, Mireya Astroina – Baicué, Pablo – Cuchimba, Angie – Ñeñetofe, Deisy Tatiana Ramos: *Genocide and ecocide in four Colombian Indigenous Communities: the Erosion of a way of life and memory*. The British Journal of Criminology, Vol. 61. Issue 4, July 2021, pp. 978–979. DOI: <https://doi.org/10.1093/bjc/azaa109>.

⁴⁷¹ The original research was published: Friedemann, Nina S. de: Niveles contemporáneos de indigenismo en Colombia. In: Friedemann, Nina S. de – Friede, Juan – Fajardo, Darío (Eds.): *Indigenismo y aniquilamiento de indígenas en Colombia*. Universidad Nacional de Colombia, Facultad de Ciencias Humanas, Departamento de Antropología, Bogotá, 1975.

“...any ecologically destructive practise, or process, that forcibly controls indigenous and place-based peoples’ interaction with, ejects them from or prejudices or precludes the enjoyment of, their land and the local ecosystems, whether it be climate change, the Anthropocene, mining and extraction of fossil fuels and minerals and their associated environmental externalities, or even the latest market orientated conservation and climate change mitigation schemes, which render them “socially dead even if non-lethal coercive means are used.”⁴⁷²

There is another angle of human rights that strongly connects human rights and ecocide. Indigenous communities are highly affected by environmental destruction, such as in Brazil, but other countries also have to be considered, including Canada. In 2019, a national inquiry’s findings showed a strong link between missing and murdered Indigenous women and resource extraction projects, boomtowns and man camps.⁴⁷³ Based on the findings of the inquiry commission, Indigenous activists at COP26 wanted to raise awareness of the linkages between extractive industries, climate destruction and violence against indigenous women and girls. They asserted that femicide is directly linked to ecocide.⁴⁷⁴

In 2021 Indigenous leaders in the Brazilian region, with the support of Brazilian NGOs and the help of a team of Parisian lawyers led by William Bourdon, took Brazilian President Jair Bolsonaro to the International Criminal Court (ICC) for destroying the Amazon rainforest and trampling on the rights of Indigenous peoples. Although, as there is currently no legal basis for this, he would be held responsible for crimes against humanity rather than ecocide, the case is also closely linked to the promotion of ecocide.

⁴⁷² Quote from: Developmentalism and the Genocide-Ecocide Nexus available online p. 10. Original article: Crook, Martin – Short, Damien: *Developmentalism and the Genocide-Ecocide Nexus*. Journal of Genocide Research, Vol. 23. No. 2. November 2021, pp. 162-188. DOI: <https://doi.org/10.1080/14623528.2020.1853914>

⁴⁷³ National Inquiry into Missing and Murdered Indigenous Women and Girls: Report, Canada. Available at: <https://www.mmiwg-ffada.ca/final-report/>.

⁴⁷⁴ Brook, Lilly: *Indigenous women speak out at Cop26 rally: ‘Femicide is linked to ecocide’*. The Guardian. 10 November 2021. Available at: <https://www.theguardian.com/environment/2021/nov/10/indigenous-women-speak-out-at-cop26-rally-femicide-is-linked-to-ecocide>.

CHAPTER 8.

ECOCIDE IN THE EUROPEAN SPHERE, WITH SPECIAL REGARD TO THE LAW OF THE EUROPEAN UNION

“The world is reaching the tipping point beyond which climate change may become irreversible. If this happens, we risk denying present and future generations the right to a healthy and sustainable planet – the whole of humanity stands to lose.”⁴⁷⁵

Environmental protection and sustainable thinking are gaining momentum nowadays. The European region has always been at the forefront of environmental considerations, but this is mainly due to the fact that it has been significantly affected by the negative impacts of the Industrial Revolution. The European Union (EU), as a *sui generis* entity, now has extensive environmental legislation, significantly shaping the relevant legislation in the Member States.⁴⁷⁶ Undoubtedly, the most crucial challenge of our century is tackling global ecological problems, which also have serious negative consequences for European countries. In this chapter, I would like to summarise how ecocide as a legislative concept found its way to the law of the European Union and how the Member States implemented domestic measures to tackle the most severe environmental issues. Also, I would like to emphasise the importance of the European sphere as a territory, since it was one of the most burdened areas by environmental degradation because of the Great Industrial Revolution.

⁴⁷⁵ Kofi Annan, former Secretary-General of the United Nations. Source: Davis, Nicola: *We must challenge climate-change sceptics who deny the facts*. The Guardian, 2015. Available at: <https://www.theguardian.com/environment/2015/may/03/kofi-annan-interview-climate-change-paris-summit-sceptics>.

⁴⁷⁶ See Gombos, Katalin – Sziebig, Orsolya Johanna: *Az európai uniós környezetjogi szabályozás legújabb irányai* [The newest aspects of environmental legislation of the European Union]. Ludovika Publishing, Budapest, 2021.

But this hindrance also catalysed environmental legislation to rebuild the ecological balance of the continent.

8.1. Environmental degradation and the quest for sustainability in the European sphere

For a long time, even though scientists warned us about the adverse effects of climate change, it did not seem to affect the mind-set of the Western or well-developed nations. One assumes that climate change is an issue for less-developed nations as the “modern” world has sustained its old roots. On the other hand, in recent years, Europe has realised that climate change is fundamental for us, and Europe has had to face more and more adverse environmental phenomena.

In the summer of 2021, Europe experienced a series of disasters. The extreme weather brought heavy rains and flooding in the west, as well as heatwaves and unprecedented fires in the south. In the words of Greek Prime Minister *Kyriakos Mitsotakis*, “*the fires have shown the reality of climate change*.”⁴⁷⁷ Meanwhile, climate scientists are warning of a slowdown in the Gulf Stream, which could fundamentally change the climate in the European region. Recent modelling suggests that the current could weaken by around 35-45% by the end of this century, leading to irreversible instability.⁴⁷⁸ A recent study estimated that the “*Atlantic meridional overturning circulation*” (AMOC), which has not been shut off for 12,000 years, may collapse as early as 2025.⁴⁷⁹ Based on the regional analyses of the Report of 1.5 °C of the IPCC, the European region is facing rising temperatures and sea levels, while extreme weather events are becoming more frequent, including floods, prolonged heat waves and periods of drought.⁴⁸⁰ Furthermore, there is also a significant loss of biodiversity, which, although more favourable in Europe than in other parts of the world, is still around 24%. Climate change is a major contributor to

⁴⁷⁷ BBC: Greece wildfires spread, causing mass evacuations. Available at <https://www.bbc.com/news/world-europe-58124129>.

⁴⁷⁸ Caesar, L. – McCarthy, G. D. – Thornalley, D. J. R. – Cahill, N. – Rahmstorf, S.: *Current Atlantic Meridional Overturning Circulation weakest in last millennium*. Nature Geoscience, 2021. pp. 118–120. DOI: 10.1038/s41561-021-00699-z.

⁴⁷⁹ Ditlevsen, P. – Ditlevsen, S.: *Warning of a forthcoming collapse of the Atlantic meridional overturning circulation*. Nature Communications, Vol. 14:4254, 2023. pp. 1–12. DOI: <https://doi.org/10.1038/s41467-023-39810-w>.

⁴⁸⁰ IPCC: *AR6 Working Group I report*. Regional fact sheet – Europe, pp. 1–2. Available at: https://www.ipcc.ch/report/ar6/wg1/downloads/factsheets/IPCC_AR6_WGI_Regional_Fact_Sheet_Europe.pdf.

biodiversity loss, but the leading cause is the alteration or loss of natural terrestrial and aquatic habitats.⁴⁸¹

The months-long droughts in Europe in 2022 and 2024, the increase in tropical nights,⁴⁸² and the unpredictability of rainfall all point to the fact that we must take adverse environmental changes seriously on our Continent. The effects of climate change are felt even more intensively in urbanised environments, where the heat-island effect⁴⁸³ and air pollution negatively impact residents' health. The relationship between climatic variables such as temperature, relative humidity, air quality index and health risks has shown that the health impacts of climate are more significant in areas with lower air quality.⁴⁸⁴ However, cities are also primarily responsible for climate change, based on the data of the IPCC's 2022 report, which found that urban areas are responsible for 70 per cent of global CO₂ emissions, with transport and buildings among the biggest polluters.⁴⁸⁵

The European Union is seen as a key player in achieving sustainability and recognises this and will contribute in a “*positive and constructive*” way to the 2030 Agenda. The EU is moving forward in active international cooperation with its priorities towards the relevant SDGs, from planning to implementation and reporting. The EU and its Member States are the world's leading donors of Official Development Assistance. In 2022, the EU collectively gave €92.8 billion, accounting for 43% of global aid. The Global Gateway contributes directly to achieving the interconnected Sustainable Development Goals, mainly through investments in transport, energy and digital infrastructure, health and education.⁴⁸⁶ The Sustainable Growth Strategy sets out the economic and social priorities of the European Union, which focuses on four aspects from the start of the European Semester 2020 cycle: environmental sustainability, productivity, equity

⁴⁸¹ A comprehensive picture of biodiversity loss is provided by the WWF's 2020 Living Planet Report. Almond, R.E. A. – Grooten, M. – Petersen, T. (Eds.): *Living Planet Report 2020 – Bending the curve of biodiversity loss*. WWF, Gland, Switzerland, 2020, pp. 19–20. Available at: <https://f.hubspotusercontent20.net/hubfs/4783129/LPR/PDFs/ENGLISH-FULL.pdf>.

⁴⁸² Tropical nights are when the temperature does not drop below 20°C at night.

⁴⁸³ Heat island effect is a microclimatic phenomenon specific to cities, where the temperature in the city is higher than in the surrounding rural areas.

⁴⁸⁴ Kumar, Prashant: *Climate Change and Cities: Challenges Ahead*. Frontiers in Sustainable Cities, Vol. 3. 2021, pp. 1–2. DOI: <https://doi.org/10.3389/frsc.2021.645613>.

⁴⁸⁵ IPCC: *Climate Change 2022: Impacts, Adaptation and Vulnerability*. Available at: https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_FullReport.pdf.

⁴⁸⁶ European Union: *Sustainable Development Goals*. Available at: https://international-partnerships.ec.europa.eu/policies/sustainable-development-goals_en.

and macroeconomic stability.⁴⁸⁷ Competitive sustainability has become a key concept in the EU, which also means integrating sustainability objectives into the macroeconomic dimension. At the same time, the structure of the country reports has expanded and changed, presenting the challenges related to sustainable development objectives in the framework of the European Green Deal and the Sustainable Growth Strategy. The new annexe to the country reports also shows the progress of each Member State towards the SDGs and trends over the five years preceding the publication of the report.⁴⁸⁸ Eurostat monitors the EU's progress towards the SDGs through 102 indicators. The EU indicators reflect the statistical quality and relevance in the context of EU policy. The indicators are assessed annually for short (last five years of available data) and long-term (fifteen) periods. The report, published in 2024, is the eighth in the series. The report also examines the impact of recent developments on the SDGs based on quarterly and monthly data. It also includes a section on the EU in the world and analyses the spill-over effects of EU consumption. Accurate data is essential to identify the way forward, and the EU self-assessment provides an accurate picture of the EU and its Member States comprehensively.⁴⁸⁹

In the European Union, the European Green Deal and the Climate Act⁴⁹⁰ are the cornerstones of ambitious plans that have been set out to promote green transition. The main objective is to make Europe climate-neutral by 2050, which means net zero greenhouse gas emissions. The set goal means if GHG emissions do occur, they must be compensated. Since its acceptance, for the past few years the European Green Deal has provided a framework for environmental measures adopted in the European Union, ranging from achieving climate neutrality through habitat restoration to

⁴⁸⁷ European Commission: *Autumn Package European Semester*. Available at: https://commission.europa.eu/business-economy-euro/european-semester/european-semester-timeline/european-semester-autumn-package_en.

⁴⁸⁸ Nyikos, Györgyi: *Fejlesztéspolitika. Következő Nemzedék EU Helyreállítási és Rezilienciaépítési Eszköz* [Development policy. Next Generation EU Recovery and Resilience Instrument]. Nemzeti Közzolgálati Egyetem, Közigazgatási Továbbképzési Intézet, Budapest, 2022. pp. 28–29.

⁴⁸⁹ Eurostat: *Sustainable development in the European Union. Monitoring report on progress towards the SDGs in an EU context 2024 edition*. Luxembourg: Publications Office of the European Union. 2024. Available at: <https://ec.europa.eu/eurostat/documents/15234730/19397895/KS-05-24-071-EN-N.pdf/730c983a-fa93-6ce2-7905-2379de04f3e9?version=1.0&t=1718611411114>.

⁴⁹⁰ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'). OJ L 243, 9.7.2021, p. 1–17. CELEX-32021R1119.

provisions on energy law.⁴⁹¹ The European Union is also committed to supporting the climate measures agreed upon internationally as a unity of Member States and a stand-alone organisation. This effort was embodied by the early ratification of the Kyoto Protocol and commitment to an 8% reduction in emissions between 2008 and 2012, compared to 1990 levels. Unfortunately, the Kyoto system has not lived up to expectations.⁴⁹² The EU and all its Member States have also signed and ratified the Paris Agreement⁴⁹³ and are firmly committed to its implementation.⁴⁹⁴ By approving the international agreement, the EU and its Member States are legally committed to the key objective of the agreement, which is to keep global temperatures within safe limits. The Convention aims to limit the increase in global average temperature to well below 2°C above pre-industrial levels and to limit the temperature increase to 1.5°C above pre-industrial levels.⁴⁹⁵

The European Union has defined common climate goals, but there are significant differences between the member states regarding national commitments and emission reductions. Since the turn of the millennium, greenhouse gas emissions have increased by more than 40% worldwide. After the decrease in 2020 due to the epidemic, 2021 saw a “rebound”. The Climate Change Performance Index (CCPI) evaluates the climate efforts of the most polluting countries and the EU. The CCPI applies a standardised framework to compare the climate performance of 63 countries and the European Union, which together account for more than 90 per cent of global greenhouse gas emissions. Mitigation performance is assessed in four categories: greenhouse gas emissions, renewable energy, energy use and climate policy. The European Union has been improving its position in the CCPI ranking year after year thanks to ambitious climate targets, from 19th in 2023 to 16th in 2024. However, expert reports highlight that the EU must seek to reduce energy demand. The new supply agreements with the United States, Azerbaijan, Algeria and other countries carry risks, primarily due to the new infrastructure needed to

⁴⁹¹ In detail, see European Union: European Green Deal, available at <https://www.consilium.europa.eu/en/policies/green-deal/>.

⁴⁹² Petroula, Theodora – Swart, Rob – Guegle, Bernd – Strobel, Bernd – Taylore, Peter: *Implementing the Kyoto Protocol in the European Community*. International Review for Environmental Strategies, Vol. 5. No. 1. 2004, pp. 83–108.

⁴⁹³ Paris Agreement, UNTS, Vol. 3156, p.79.

⁴⁹⁴ The European Union ratified the Paris Agreement on 5 October 2016.

⁴⁹⁵ Paris Agreement, Article 2 (a): “Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change.”

import gas.⁴⁹⁶ Fourteen EU Member States are ranked between high and medium performers, with Denmark (4th) and Estonia (5th) leading the overall ranking. Italy, however, has dropped 15 places to 44th, mainly due to a weaker performance in climate policy compared to the previous year. Poland (55th) is the only EU Member State with a very low rating. Hungary's rating remains low, but it has improved four places compared to 2023 (49th).⁴⁹⁷

Although there are positive changes in the European sphere, several long-standing issues have influenced a successful green transition. For example, the problems of natural gas import, dependence on Russian energy sources and exposure to international market volatility have long been known to be a problem for EU Member States. Data over the last ten years shows that Member States have reacted differently to energy poverty and market price movements. In terms of past models, the impact of market price increases on consumers and competitiveness has not been examined, despite the European Commission's priority on affordability. The regional cooperation groups set up to deal with crises have not delivered the expected benefits despite being set up specifically to answer such challenges.⁴⁹⁸

Given the above, there is an increasing need to protect the environment and apply adequate sanctions to the most serious environmental offences. Effective and dissuasive sanctions against those who violate the law are essential to achieving the climate goals. That is why the European Union has decided to rethink the liability regime as part of the European Green Deal. Criminal law protection of the environment is a recent phenomenon, dating back to the 1970s, especially as an EU regulation. The European Union made efforts to persuade Member States to adopt reformed legislation in this area, and Directive 2008/99/EC on the protection of the environment through criminal law provides the legal basis for this, which was replaced by a new legislative act recently. In EU law, the choice of the form of the legal act also indicates the objective to be achieved since regulation is the secondary source of law to be used when there is

⁴⁹⁶ Burck, Jan et al.: *Climate Change Performance Index. Results Monitoring Climate Mitigation Efforts of 63 Countries plus the EU – covering more than 90% of the Global Greenhouse Gas Emissions*. 2024, p. 20. Available at: <https://ccpi.org/wp-content/uploads/CCPI-2024-Results.pdf>.

⁴⁹⁷ Climate Change Performance Index: *Top 3 remain empty as countries must speed up implementation*. 2024. Available at: <https://ccpi.org/countries>.

⁴⁹⁸ Eurostat: Special Report, Security of the supply of gas in the EU EU's framework helped member states respond to the crisis but impact of some crisis-response measures cannot be demonstrated. pp. 18–50. Available at: https://www.eca.europa.eu/ECA-Publications/SR-2024-09/SR-2024-09_EN.pdf.

a need for common rules and the aim is to achieve legal uniformity. Directives are primarily instruments for harmonisation, where the Member States have a free choice, within the limits of EU law, as to the path to be followed in order to achieve the objective while defining the “framework.”⁴⁹⁹ Directives have been the main instrument for implementing environmental policy since harmonisation is difficult to achieve because of regional differences and the great diversity of Member States. As a result, regulation is used when there is a real need for fully harmonised action. The EU’s environmental regulatory field can be divided into two major areas: horizontal or overarching general provisions and so-called sectoral legislation, such as provisions on nature protection and noise pollution.⁵⁰⁰

Again, we must emphasise the importance of social awareness in enforcing environmental legislation. It is proved that the population of Eastern European States is becoming more sensitive to environmental issues, but the East-West divide is still visible. Europe cannot be treated as one when we talk about environmental attitudes at a governmental or societal level. The effects of climate change will also be felt differently in different European countries, so region- and country-specific programmes must be put in place to help ensure environmental regulations are implemented.⁵⁰¹

Surveys showed that more than nine out of ten people consider climate change a serious problem (93%), with almost eight (78%) believing it to be very serious. The survey also asked what the single most serious problem in the world is nowadays. 29% of the surveyed chose climate change (18%), deterioration of nature (7%) or health problems due to pollution (4%). Most (64%) of EU citizens are willing to take individual climate action daily. However, data clearly shows that the citizens of Eastern European countries are less environmentally conscious. Attitudes towards climate actions range from 94% in Portugal, 88% in Sweden and 87% in Denmark, Ireland and Luxembourg to 66% in Czechia, 67% in Romania and 69% in Bulgaria and Latvia.⁵⁰²

⁴⁹⁹ Gombos, Katalin: *Európai jog – Az Európai Unió jogrendszere* [European law – the legal system of the European Union]. Wolters Kluwer, Budapest, 2019. pp. 50–53.

⁵⁰⁰ Bándi, Gyula: *Környezetvédelmi politika* [Environmental protection policy]. In: Kende Tamás (Ed.): *Bevezetés az Európai Unió politikáiba* [Introduction to the policies of the European Union]. 4. kiadás, Wolters Kluwer Hungary, Budapest, 2019. p. 667.

⁵⁰¹ See in detail this topic: Sziebig, Orsolya Johanna: *The Challenges of the Eastern European States in Building Climate Resilience and Green Democracies – Tendencies and New Happenings*. European Review of Public Law, Vol. 35. No. 1. 2023, pp. 49–73.

⁵⁰² Eurobarometer: Special Eurobarometer 513 Climate Change. 2021. DOI: 10.2834/437 Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3156.

Less interested or worried citizens elect less environmentally conscious politicians, resulting in a continued east-west divide over climate action. It is a generalisation to provide such a statement. However, the governments of Central and Eastern European states still choose industry and jobs over environmental considerations, so the regions remain energy-intensive and protective of their traditional industries.⁵⁰³ As *Judith Kirton-Darling*, a former member of the European Parliament and deputy general secretary of industriAll Europe, stated: “*lots of our focus is on Central and Eastern Europe because it’s a combined phase-out of coal, transformation of heavy industry and changing the automotive industry all at the same time.*”⁵⁰⁴ Another issue is that Eastern Europe joined the European integration decades later than the Western countries, so “*the Central and Eastern European countries don’t feel they have been involved in the development of the climate agenda, and they resist it instinctively.*”⁵⁰⁵

If we look at the perception of ecocide in the European Union, we have to analyse two segments. Firstly, the discourse within the EU’s organisational framework, the various programmes or legislative proposals, and the range of legal acts adopted. Secondly, the individual EU Member States legislative measures should be explored, as there are a growing number of countries which are openly advocating the criminalisation of the most serious environmental offences, such as ecocide. As we have seen in the previous chapter, there is a growing interest in the international community in amending the Rome Statute. The European Union does not have the competence to expect the Member States to adopt a unified position on this issue at a supranational level. Still, it can encourage them to take a certain position on the matter.

⁵⁰³ Lessenski, Marin: *Taking on climate change: The new east-west divide?* 4 October 2019 European Council on Foreign Relations. (online) Available at: https://ecfr.eu/article/commentary_taking_on_climate_change_the_new_east_west_divide/.

⁵⁰⁴ Energy Monitor: *Why Eastern Europe resists EU climate action*. 31 August 2021 Available at: <https://www.energymonitor.ai/policy/just-transition/why-eastern-europe-resists-eu-climate-action/>.

⁵⁰⁵ Julian Popov, a fellow at the European Climate Foundation and former Minister of Environment of Bulgaria Source: Energy Monitor (2021).

8.2. The appearance of the ecocide concept in the discourse of EU institutions and other bodies

Ecocide does not have a long history in the institutional discourse of the European Union. The real turning point came in 2021 when progress was made on several occasions in assessing activities involving serious environmental degradation which specifically mentioned ecocide. *Salima Yenbou*, former MEP (2019-2024), presented the addendum to the report.⁵⁰⁶ The addition approved by the European Parliament underlines that biodiversity and human rights are interlinked and interdependent. Furthermore, it recalls the human rights obligations of states to protect biodiversity, on which the rights depend, inter alia, on providing for the participation of citizens in decisions on biodiversity and ensuring access to effective remedies in cases of biodiversity loss and degradation. Finally, it explicitly supports the normative efforts being developed at the international level on environmental crimes and, in this regard, encourages the EU and the Member States to support the recognition of ecocide as an international crime and the addition of an International Criminal Court Statute.⁵⁰⁷ The favourable decision by the European Parliament was certainly a milestone for ecocide. This is what *Jojo Mehta*, one of the founders of the Stop Ecocide Foundation, referred to when she described the vote as “*inspiring*.”⁵⁰⁸

The European Parliament’s position was echoed by the Committee on the Environment, Public Health and Food Safety when it examined the issue of corporate liability for environmental damage, also in January 2021.⁵⁰⁹ It is noted that more and more Member States are committing to the national and international recognition of ecocide, so the Commission

⁵⁰⁶ European Parliament: EU Annual Report on Human Rights and Democracy in the World, 2019. Available at: https://eeas.europa.eu/sites/default/files/annual_report_e-version.pdf.

⁵⁰⁷ European Parliament: 2019 2020/2208(INI) Resolution of 20 January 2021 on human rights and democracy in the world and the European Union’s policy on the matter – annual report, Human rights and democracy: general trends and key challenges, 12.

⁵⁰⁸ STOP Ecocide: *European Parliament urges support for making ecocide an international crime*. Press release, 21 January 2021. Available at: <https://www.stopecocide.earth/press-releases-summary/european-parliament-urges-support-for-making-ecocide-an-international-crime>.

⁵⁰⁹ Committee on the Environment, Public Health and Food Safety: 2020/2027(INI) 29 January 2021 Opinion of the Committee on the Environment, Public Health and Food Safety for the Committee on Legal Affairs on liability of companies for environmental damage

was invited to examine the EU relevance of the issue.⁵¹⁰ Furthermore, they called on the Commission and Member States to raise awareness and promote solutions for the protection of environmental rights and the recognition of ecocide in international law, which take into account the risks arising from the trans-boundary nature of environmental damage and organised crime.⁵¹¹ It is no coincidence that the Parliamentary Commission specifically referred to the issue of cross-border environmental damage and organised crime. There is also a global trend in the European Union for syndicates previously considered to be traditional forms of organised crime – trafficking in human beings, arms and drugs – to recognise the potential of natural assets. Thus, the illegal trade in wildlife species and natural resources such as timber are increasingly being confronted. In addition, the internal market makes the EU area even more vulnerable. Once the illegal trade has passed through external borders, it is free to move between Member States, given the lack of comprehensive control. Henceforth, the European Union is not only a destination but also an important transit point for illicit trafficking between continents.⁵¹² Joint action against environmental crime is, therefore, necessary and will be strengthened in the framework of the European Police Office's Environmental Crime Network (ENVICrimeNet), recognising that relevant crimes, including ecocide, have a negative impact on human health and biodiversity.⁵¹³

In April 2021, the Legal Affairs Committee also examined the issue of corporate liability. The Committee on the Environment, Public Health and Food Safety once more confirmed its position and called on the European Commission to examine the relevance of ecocide for EU law.⁵¹⁴ Shortly before, the Committee on Foreign Affairs issued a report urging the EU and its Member States to support the Special Representative on Human Rights to ensure that perpetrators of environmental crimes are prosecuted. Furthermore, it was highlighted that the way must be opened

⁵¹⁰ Ibid. para 42.

⁵¹¹ Ibid para 43.

⁵¹² See Sziebig, Orsolya Johanna: *A vadvilágot károsító cselekmények nemzetközi jogi keretei* [The International Legal Frameworks of Wildlife Crime], PhD dissertation, 2019. pp. 30–65. Available at: https://doktori.bibl.u-szeged.hu/id/eprint/10247/1/PhDertekezes_dr.jur.Sziebig_Orsolya_Johanna_LL.M..pdf.

⁵¹³ 2020/2027(INI) 7. para 37.

⁵¹⁴ Legal Affairs Committee: A9-0112/2021 10 May 2021 Report on the liability of companies for environmental damage (2020/2027(INI)) Committee on Legal Affairs 9. para 12.

towards new negotiations between the International Criminal Court and the state parties for the recognition of ecocide as an international crime under the Rome Statute. Finally, they called on the Commission, the Vice-President of the Commission and the High Representative for Foreign Affairs and Security Policy to strengthen the national capacities of Member States in these areas by adopting new programmes.⁵¹⁵

Marie Toussaint, Green Party MEP since 2019 and initiator of the *Ecocide Alliance*, is the main driving force behind the ecocide debate in the European Parliament. The Alliance brings together parliamentarians who openly support the amendment of the Rome Statute and seek to have ecocide recognised as a criminal offence in their own countries. The Alliance is global, with members from the United States, Canada, Australia, several European countries (e.g. Belgium, Finland, Switzerland, Sweden), and the Philippines.⁵¹⁶

Meanwhile, a comprehensive research study was launched at the European Law Institute in February 2021, which ran until September 2022.⁵¹⁷ The project aimed to enable the ELI, as a promoter of legal reform, to contribute to the debate on the recognition of ecocide as an international crime and to provide constructive analysis and criticism of the proposed definition established by the expert committee. Furthermore, it defined the aspects that characterise the crime of ecocide and the conditions for its prosecution, explicitly within a European framework. In this way, the ELI research made it possible to identify the elements of the offence of ecocide which could form the legal basis for the adoption of EU legislation. At the same time, the project helped to raise awareness and gather support in the European sphere for the inclusion of ecocide in the Rome Statute. The project also supported existing policy and legal measures to establish an EU-wide and cross-border duty of care to prevent the threat or widespread damage, destruction or loss of ecosystems. At the EU level, any natural or legal person should be prohibited from participating in or facilitating the crime of ecocide, and such conduct should be punishable under criminal law. Overall, therefore, the research project had three main objectives. First, it contributed to the recognition of ecocide as an international crime. Secondly, it developed a regulatory model for the European Union to criminalise ecocide at the supranational level. Finally, it also set out a regulatory model for civil remedies for ecocide, which

⁵¹⁵ Ibid 11 para 11.

⁵¹⁶ Ecocide Alliance, international parliamentary alliance for the recognition of ecocide. Available at: <https://www.ecocidealliance.org/who-we-are>.

⁵¹⁷ Based on the Council Decision CD 2021/9 of 12 February 2021 on a Project (Approval of the 'Ecocide' Feasibility Study to Proceed as an ELI Project).

takes into account the private international law aspects.⁵¹⁸ The Report of the ELI also contains “*A Model Proposal for a European Council Decision Making it Possible for the European Public Prosecutor’s Office to Investigate, Prosecute and Bring to Judgment the Perpetrators of, and Accomplices in, Offences Constituting the Crime of Ecocide*” and a proposal to amend Article 86 of the Treaty on the Functioning of the European Union with regard to the competences of the EPPO.⁵¹⁹

Within the EU’s organisational system, we can certainly see a revival of the discourse on ecocide. The concept has gained considerable support from Green MEPs. Moreover, with more Member States individually supporting the criminalisation of serious environmental damage, a similar trend can be expected at EU level. This is confirmed by the 2030 Biodiversity Strategy, adopted in summer 2021, which explicitly foresees exploring the potential of a revision of the Directive on the protection of the environment through criminal law, “*including the extension of the scope of the Directive and the inclusion of specific provisions on the types and level of penalties.*”⁵²⁰

8.3. The “pressure” of direct democracy in the European Union – the history of a European Citizens’ Initiative

The European Citizens’ Initiative provides a unique opportunity for citizens to influence EU policies and legislation on a wide range of issues that affect them. Although the true effectiveness of the citizens’ initiative is questionable due to complex procedural and validity rules, it remains the most powerful instrument of direct democracy available to EU citizens today.⁵²¹ The initiative “*End Ecocide in Europe: a citizens’ Initiative for Earth Rights*” was registered in October 2012.⁵²² The Initiative had three main goals:

⁵¹⁸ ELI: ELI Report on Ecocide. Available at: <https://www.europeanlawinstitute.eu/projects-publications/publications/eli-report-on-ecocide/>.

⁵¹⁹ ELI Report on Ecocide, Model Rules for and EU Directive and a Council Decision. 2023, pp. 28–41. Available at: https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Report_on_Ecocide.pdf.

⁵²⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions. EU Biodiversity Strategy for 2030. Brussels, 20.5.2020 COM(2020) 380 final, 4.2.2.

⁵²¹ Kiss, Lilla Nóra – Sziebig, Orsolya Johanna: *Defining the Common European Way of Life Exploring the Concept of Europeanness*. Hungarian Yearbook of International Law and European Law, Vol. 9. No. 1, 2021. pp. 111–131.

⁵²² End Ecocide in Europe: A Citizens’ Initiative to Give the Earth Rights. Registry number: ECI(2012)000012 Available at: https://europa.eu/citizens-initiative/initiatives/details/2012/000012_hu

“We invite the European Commission to adopt legislation to prohibit, prevent and pre-empt Ecocide, the extensive damage to, destruction or loss of ecosystems.

- 1. Criminalise Ecocide and ensure that natural and legal persons can be held responsible for committing Ecocide according to the principle of superior responsibility.*
- 2. Prohibit and prevent any Ecocide on European territories or maritime territories falling under EU legislation, as well as acts outside the EU committed by EU registered legal persons or EU nationals.”*
- 3. Provide for a period of transition to facilitate a sustainable economy.”*

In its explanatory memorandum, the initiative refers to the negative changes already detailed in the introductory thoughts, such as the expected increase in greenhouse gas emissions and the loss of biodiversity. The organisers see an urgent need to adopt new legislation that protects people and the planet, helps businesses develop new models that embrace the potential of the green economy and the impacts of resource scarcity, and ensures the right to life of current and future generations.⁵²³ Although the initiative was withdrawn in January 2013, it can be seen as an important step as it is the first time that eco-innovation has been explicitly introduced as a new concept in the EU discourse. Of course, with hindsight, one can only speculate, but in the early 2010s, even if the initiative had succeeded, there is little chance that it would have encouraged the European Commission to come forward with a new legislative proposal. Interestingly, EU citizens have often turned to the European Citizens’ Initiative (ECI) as a tool, specifically for environmental issues that affect a wide swathe of society. However, only a small percentage of registered initiatives have been followed up by a substantive response from the European Commission, given the requirements linked to the applicable collection period. Furthermore, even if the signature collection procedure has proved successful, the Commission has thus far exercised its right of initiative on the substance of virtually only one proposal relating to healthy drinking water.⁵²⁴

⁵²³ Ibid p. 4.

⁵²⁴ Gombos, Katalin – Sziebig, Orsolya Johanna: *A polgári kezdeményezés mint a közvetlen demokrácia eszköze az Európai Unióban – jegyzetek az új szabályozás margójára* [The citizens’ initiative as a tool for direct democracy in the European Union - notes on the new legislation]. Jogtudományi Közlöny, Vol. 75. No. 12. 2020. pp. 556–565.

8.4. Ecocide legislation in the European sphere

In this subchapter, I am summarising the main legislative efforts that can be found in the European sphere, which is to criminalise ecocide. It is noted that several new laws are being negotiated worldwide and in Europe. Still, since this chapter focuses on the ‘old continent’, I am focusing on the latest European laws, including the new Environmental Crime Directive (ECD) of the European Union. In addition, as the implementation of the ECD is still work in progress, the list will not be definitive and, since the completion of this book, new developments are already anticipated. As I mentioned earlier, a growing number of EU Member States are choosing to support the concept of ecocide and the Rome Statute.

8.4.1. The United Kingdom

The United Kingdom⁵²⁵ is no longer a member of the European Union, but it is interesting to see how it responds to global and European environmental regulatory trends in its post-Union period. It is expected that the environmental standards that come with EU membership will be retained in the island nation.⁵²⁶ On ecocide, a proposal has been put forward by *Natalie Bennett*, former leader of the Green Party. If adopted, it will represent a firm commitment by the UK government to international support for eco-centredness, including the addition of the Rome Statute. However, a debate on the proposal in the House of Lords revealed that a number of opposing views could prevent its adoption. Among other things, problems that have arisen in the practical operation of the ICC, such as jurisdictional issues, could be an obstacle to the unanimous adoption of the proposal.⁵²⁷ The proposal has the particularity of making the definition of ecocide, adopted in spring 2021, subject to legislation for the first time.⁵²⁸

⁵²⁵ Left on 31 January 2020.

⁵²⁶ See MacLennan, Jacquelyn – Forwood, Geneva: *Environmental Law after Brexit*. 09 March 2021 Available at: <https://www.whitecase.com/publications/alert/environmental-law-after-brexite>.

⁵²⁷ Ecocide Volume 814: debated on Wednesday, 21 July 2021.

⁵²⁸ Environment Bill amendment 287 supports for an international crime; amendment 293D, the full definition as a UK crime Available at: <https://bills.parliament.uk/publications/42056/documents/465>

In 2024, a new bill was introduced “*on the crime of ecocide and for connected purposes*” as a private member’s bill.⁵²⁹ The new law was introduced by *Baroness Rosie Boycott*, who commented the submission as the following: “*If, as a country, we are serious about playing a meaningful role in guiding the global response to the climate and ecological crisis, we need not only robust domestic ecocide legislation but also to throw our weight behind international efforts to recognise ecocide as a fifth crime against peace, alongside genocide, at the International Criminal Court.*”⁵³⁰

The new bill defines ecocide similar to the expert committee’s definition:

“*For the purposes of this Act, “ecocide”—*

(a) as it applies to an individual, means unlawful or wanton acts or omissions committed by persons of superior responsibility who had knowledge, or should have had knowledge, that there was a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts;

(b) as it applies to a company, organisation, partnership or other legal entity, means strict liability for unlawful or wanton acts or omissions with a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.”⁵³¹

8.4.2. The efforts of EU Member States to criminalise ecocide

Not surprisingly, Sweden was one of the first countries to put considerable weight behind criminalising the most serious environmental offences. In a joint article, the leaders of the Swedish Trade Union Confederation and the Olof Palme International Centre highlighted the importance of the Stockholm +50 conference in 2022, where Sweden could once again show that it is a pioneer in environmental protection.⁵³² Recalling the

⁵²⁹ The Bill was submitted by Baroness Rosie Boycott. Ecocide Bill HL Bill 21 Originated in the House of Lords, Session 2023–24. Available at: <https://bills.parliament.uk/publications/53197/documents/4084>.

⁵³⁰ STOP Ecocide International: *UK ‘ecocide bill’ introduced in House of Lords*. Available at: <https://www.stopecocide.earth/breaking-news-2023/uk-ecocide-bill-introduced-in-house-of-lords>.

⁵³¹ *Ibid.*, p. 3.

⁵³² Svenska Dagbla: *Criminalising large-scale environmental destruction*, 3 March 2023 (Kriminalisera storskalig miljöförstörelse) Available at: <https://www.svd.se/missvisande-om-vart-arbete-kring-genteknik>.

conceptual issues, the Stop Ecocide Foundation was approached by the Swedish governing parties specifically to define the concept of ecocide. In 2024 the Swedish Parliament (*Riksdag*) voted in favour of a proposal that urges states to consider making ecocide prohibited under international law: “Sweden is reviewing the possibility of prosecuting countries, leaders and individuals who violate international law by brazenly causing catastrophic environmental damage under the criminal classification of ecocide.”⁵³³ Also, several MPs recommended introducing ecocide law in the domestic legislation to encourage sustainable business models and the protection of the natural environment.⁵³⁴

France is one of the prominent supporters of the adoption of a separate ecocide crime. Before the G7 meeting in the summer of 2019, *Emmanuel Macron* explicitly stated that better management of the Amazon is needed to stop ecocide. At the 2020 climate change meeting in Paris,⁵³⁵ there was overwhelming support for ecocide. *Macron* then pledged to explore legal options to make the new crime part of French law.⁵³⁶ In April 2021, the French National Assembly voted in favour of a new law imposing highly harsh penalties on polluters. Offenders could face up to 10 years in prison and a fine of €4.5 million. Former Minister of Ecological Transition (2020–2022) *Barbara Pompili* stressed that the draft law specifically targets national incidents, such as the pollution of a French river. At the same time, the amount of environmental fines that can be imposed will be increased up to €100,000.⁵³⁷ The measures envisaged by France, which include ecocide legislation, could fundamentally change the way citizens live their lives; it is no wonder that there are divergent views.⁵³⁸ The provisions require more vegetarian meals to be provided in state-funded canteens. It also blocked the expansion of French airports and cut back on wasteful plastic packaging. It should halve the amount of landfilling by banning the construction of shopping centres on agricultural land. Short-haul flights (all domestic flights for which there are alternatives

⁵³³ Betänkande 2023/24:UU14, Mänskliga rättigheter, Utrikesutskottets betänkande Available at: https://www.riksdagen.se/sv/dokument-och-lagar/dokument/betankande/manskliga-rattigheter_hb01uu14/html/#_Toc165018829.

⁵³⁴ Ibid.

⁵³⁵ Convention Citoyenne pour le Climat (CCC) Available at: <https://www.convention-citoyennepourleclimat.fr/>.

⁵³⁶ The Ecologist: Incorporating ecocide into French law, 15 July 2020 Available at: <https://theecologist.org/2020/jul/15/incorporating-ecocide-french-law>.

⁵³⁷ France24: France drafts ‘ecocide’ bill to punish acts of environmental damage, 17 April 2021 Available at: <https://www.france24.com/en/france/20210417-france-drafts-ecocide-bill-to-punish-acts-of-environmental-damage>.

⁵³⁸ The climate act is available at: <https://www.ecologie.gouv.fr/loi-climat-resilience>.

and can be reached by train in less than 2 hours 30 minutes) would be abolished. Since 2024, the most polluting vehicles have been restricted in cities, quadrupling the number of low-emission zones. From the middle of the decade, no energy-intensive houses will be allowed to be rented, and from 2040, no heavy goods vehicles using fossil fuels, diesel or petrol will be allowed on the road.⁵³⁹ The proposal was approved in July 2021 but has attracted significant protest from environmental organisations, who say the plan to cut greenhouse gas emissions by around 40 per cent from 1990 levels is insufficient. While the French legislation may indeed be open to criticism in the area of climate action, its criminal law implications are certainly considered extremely severe in the current European, indeed global, context.⁵⁴⁰ The Climate and Resilience Bill was adopted as Law 2021-1104 of 22 August 2021 “*on combating climate change and strengthening resilience to its effects endangering the environment.*” The new legislation included new offences to the French criminal law, such as a general offence of polluting the environment and the offence of ecocide for the most serious environmental crimes. Based on the new regulation, “*if a party is found to have exposed the environment to risk of sustained degradation of fauna, flora or water by violating an obligation of safety or a duty of care, the offence is punishable by a prison sentence of up to three years and a fine of up to €250,000.*”⁵⁴¹ In Article 231-3, the new law introduced ecocide as a criminal offence punishable by up to 10 years’ imprisonment. In Article 296 of the Climate and Resilience Bill, ecocide is also recognised as an international crime: “*Within one year of the promulgation of this law, the Government will submit a report to Parliament on its efforts to ensure that ecocide is recognised as a crime that can be tried by international criminal courts.*”⁵⁴²

⁵³⁹ L’Assemblée nationale adopte le projet de loi Climat et résilience 04/05/2021 Available at: <https://www.gouvernement.fr/l-assemblee-nationale-adopte-le-projet-de-loi-climat-et-resilience>.

⁵⁴⁰ Euronews: France’s new climate law has just been approved. So why are activists so unimpressed? Available at: <https://www.euronews.com/green/2021/07/20/france-s-new-climate-law-has-just-been-approved-so-why-are-activists-so-unimpressed>.

⁵⁴¹ Brihi, Sélim – Dufourq, Pauline: *Environmental criminal law in the French legal framework*. 27 June 2022. Available at: https://www.ibanet.org/environmental-criminal-law-in-the-French-legal-framework#_edn2.

⁵⁴² Loi no 2021-1104 du 22 août 2021 portant lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets (1) Article 296: “*Dans un délai d’un an à compter de la promulgation de la présente loi, le Gouvernement remet au Parlement un rapport sur son action en faveur de la reconnaissance de l’écocide comme un crime pouvant être jugé par des juridictions pénales internationales.*”

In France, the new law was put into practice no later than the acceptance of the bill. The famous *Grézieu-La-Varenne* was the first case criminal proceeding within the scope of the ecocide legislation. The case erupted in 2019 when several residents of the *Tupinier* commune in the *Grézieu-la-Varenne* district discovered they were living on land contaminated with hydrocarbons and heavy metals. In April 2023, the Lyon court ruled that the sellers and notaries had failed to inform successive buyers of the property in question that the house was built on the site of a former industrial laundry, whose soil was contaminated with chemicals and carcinogens. The chlorinated products came from emissions from the Mercier industrial laundry. The company had already been ordered by the Lyon Court of Appeal in the mid-1980s to pay damages to a couple from the same neighbourhood for material and physical injuries after a dubious evacuation. In the recent case, the court ordered the daughter of the original owner of the laundry company and the notaries to reimburse the first buyers of the house, who themselves will have to repay the buyer of 2019. The defendants are ordered to pay €69,519 for material and moral damages. Lyon's Court of Appeal ordered the seller and the two notaries involved in the purchase to pay nearly €900,000 to the owners to cover the cost of cleaning the site and compensation for anxiety and inability to enjoy their property. The *Grézieu-La-Varenne* real estate case was the subject of six other civil proceedings and is the first case of ecocide based on the newly adopted French law.⁵⁴³

Belgium is also at the forefront of promoting ecocide. The Green Party submitted a proposal to Parliament in July 2020 to criminalise ecocide at the national and international levels.⁵⁴⁴ It was the first European state to speak out in favour of ecocide in December 2020 at the meeting of the States Parties to the International Criminal Court. In her speech, the Foreign Minister at the time, *Sophie Wilmès*, expressed Belgium's support: *"I would like to take this opportunity to draw the attention of States Parties to the tragedy of serious environmental crimes. Belgium considers that it would be useful to examine the possibility of including the crimes known as ecocide in the Rome Statute in the framework of the work of our next sessions."*⁵⁴⁵

⁵⁴³ Le Goff, Par Aimée: *Ecocide à Grézieu-la-Varenne: le tribunal de Lyon annule les ventes initiales*. 8 April 2023 Available at: <https://www.lyoncapitale.fr/actualite/ecocide-agrezieu-la-varenne-le-tribunal-de-lyon-annule-les-ventes-initiales>.

⁵⁴⁴ DOC 55 1429/001 Proposition de résolution visant à inclure le crime d'écocide dans le Statut de Rome de la Cour pénale internationale et le droit pénal belge 8 July 2020.

⁵⁴⁵ Intervention enregistrée de Mme. la Vice-Première Ministre et Ministre des Affaires étrangères Sophie Wilmès à l'occasion du Débat général de la 19^e session de l'Assemblée des Etats parties au Statut de Rome de la Cour pénale internationale pp. 1–4.

The programme of the newly formed Belgian government includes the explicit objective of recognising ecocide at both national and international levels⁵⁴⁶ and has made efforts to make ecocide legislation a reality.⁵⁴⁷ In 2023, Belgium became the first state in Europe to recognise the crime of ecocide at national and international levels as the new Penal Code was accepted. The punishment for individuals may include up to 20 years in prison, and corporations could face fines of up to 1.6 million euros. The new crime of ecocide is aimed to prevent and punish the most severe cases of environmental degradation, such as extensive oil spills, and is applicable to individuals in the highest positions of decision-making power and to corporations.⁵⁴⁸

Luxembourg has the second-largest ecological footprint in the world, so adapting environmental standards is very important.⁵⁴⁹ In February 2021, MEPs *Gusty Graas* and *Max Hahn* framed a question in Parliament on the possible adoption of ecocide. In their replies, the Ministers for Foreign Affairs and Foreign Trade, *Jean Asselborn*, and the Minister responsible at the time for the Environment, Climate Action and Sustainable Development, *Carole Dieschbourg*, explained that Luxembourg had already increased the fines and prison sentences for environmental offences. Although they do not yet recognise ecocide in their legislation, this may be possible in the future. The two ministers said that a clear definition of the term should be agreed first and that the positions and practices of neighbouring countries as well as the EU should be carefully examined.⁵⁵⁰

Other European countries are still at the beginning of the legislative procedures, in their efforts to incorporate ecocide into national law. In December 2020, the Dutch Party for the Animals submitted a parliamentary proposal entitled “*Ecocide: the missing crime against peace.*” The initiative also aims to integrate ecocide into Dutch law and promote

⁵⁴⁶ Rapport des formateurs – Verslag van de formateurs – Paul Magnette & Alexander De Croo – 30/09/2020 79 para 5.

⁵⁴⁷ Proposition de résolution visant à inclure le crime d’écocide dans le Statut de Rome de la Cour pénale internationale et le droit pénal belge. Document parlementaire 55K1429.

⁵⁴⁸ Bill introducing Book II of the Penal Code [Wetsontwerp tot invoering van boek II van het Strafwetboek.] 2024. Available at: <https://www.dekamer.be/FLWB/PDF/55/3518/55K3518001.pdf>.

⁵⁴⁹ About ecological footprint *See* World Overshoot Day available at: <https://www.overshootday.org/>.

⁵⁵⁰ A Rôle des affaires Question écrite n° 3422 – Sujet: Reconnaissance de l’écocide Available at: <https://chd.lu/wps/portal/public/Accueil/TravailALaChambre/Recherche/RoleDesAffaires?action=doQuestpaDetails&cid=20476>.

its international recognition. The proposal's unhidden objective is to make it available in several languages, providing a model for other states. Finland's Foreign Minister, *Pekka Haavisto*, made a memorable speech at an event on the sidelines of the ICC Conference of the Parties, supporting the island states' proposal on ecocide. In the winter of 2020, the Spanish Foreign Affairs Parliamentary Committee adopted a resolution calling on the government to study the possibility of criminalising ecocide at the national and international levels and to examine the eligibility of the proposal made by Vanuatu and the Maldives.⁵⁵¹

8.4.3. The “new” Environmental Directive of the European Union – an action still under implementation

Environmental crime is a huge problem, as I have already reflected on the issue in the previous chapters of this book. However, there was a question as to whether it was necessary to harmonise environmental crime legislation at any level in the European Union. The premise of this question is whether there is any need for an approximation of criminal law in the Member States within the framework of European criminal law. The content of criminal law can be expressed in directives and regulations, which, in terms of their regulatory purpose, mainly contain rules on the organisation of criminal justice in the Member State but can also, in a narrow sense, regulate the legal relationship between the individual and the (semi-)criminal (EU) entity.⁵⁵² Based on *Duțu*, regulating environmental offences on the EU level has three advantages. Enforcing criminal penalties “*expresses social disapproval*,” and it is more discouraging if more severe penalties – including imprisonment – are applicable. Furthermore, the authorities have the possibility to use more efficient investigation methods, resulting in more effective and successful court cases.⁵⁵³ The Treaty of Lisbon clarified the European Union's criminal law-making competencies to oblige Member States to adopt criminal law provisions. The European Parliament and the Council can lay down minimum rules in the field of

⁵⁵¹ La inclusión del delito de ecicidio en el Estatuto de Rome de la Corte Penal internacional y en el Derecho Penal español 161/001736.

⁵⁵² Karsai, Krisztina: Európai Büntetőjog [European Criminal Law]. In: Jakab, András – Könczöl, Miklós – Menyhárd, Attila – Sulyok, Gábor (Eds.): Internetes Jogtudományi Enciklopédia [Internet Law Encyclopedia] (Criminal law column, column editor: Szomora, Zsolt) [9] Available at: <https://ijoten.hu/szocikk/europai-buntetojog>.

⁵⁵³ Duțu, Mircea: *Environmental Crime in the EU: is there a need for further harmonisation or for enforcement tools?* Law Review, Vol. 01. Issue 1. January-June 2016. p. 84.

criminal law through directives. The scope of offences laid down in the Lisbon Treaty (Article 83(1) TFEU), which does not explicitly include offences against the environment, can be extended by the Council, acting unanimously, in the interests of uniform Community legislation, which could help to harmonise European environmental criminal law further.⁵⁵⁴

Criminal law is the ultimate instrument of environmental protection, as the legislator qualifies illegal behaviour as a criminal offence if these acts are more harmful to society. The criminal law toolbox is, therefore, an *ultima ratio*, with specific environmental offences. The relevant criminal offences are closely linked to administrative law regulations. The harmonisation of EU law was born out of the recognition that environmental protection must be more effective in the European sphere. Directive 2008/99/EC⁵⁵⁵ set the objective of providing for more dissuasive sanctions in national law for serious infringements of Community environmental law. The first Directive adopted on this issue established the obligation to criminalise nine types of conduct. The offences were defined in a relatively broad way so that each Member State could determine their specific meaning in accordance with its legal tradition.⁵⁵⁶

In 2021, the Commission proposed a new Directive, which included the following six objectives. Firstly, it was essential to update the directive, including new environmental crime sectors under its scope. Furthermore, it was necessary to clarify terms used in the definitions of environmental crime that leave too much room for interpretation, defining the types and levels of penalties for environmental crime. Recognising the difficulties of prosecuting, investigating, and prosecuting environmental cases, it is crucial to foster cross-border investigation and prosecution and improve the collection and dissemination of statistical data according to common standards in all Member States, which will improve informed decision-making on environmental crime. Last but not least, it is necessary to enhance the effectiveness of national enforcement chains.⁵⁵⁷ The new

⁵⁵⁴ Görgényi, Ilona: *A környezetvédelmi büntetőjog megújulása az új évezredben* [The renewal of environmental criminal law in the new millennium]. Miskolci Jogi Szemle, Special Edition, 2011. p. 105.

⁵⁵⁵ Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (Text with EEA relevance) OJ L 328, 6.12.2008, p. 28–37 CELEX-32008L0099.

⁵⁵⁶ Tilki, Katalin: A környezet büntetőjogi védelme [Criminal law protection of the environment]. In: Bándi, Gyula (Ed.) *Környezetjog* [Environmental Law]. St Stephen's Society, 2022. pp. 409–424.

⁵⁵⁷ Proposal for a Directive of the European Parliament and the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC. Brussels, 15.12.2021. SWD(2021) 466 final “A” Need for Action.

Environmental Crime Directive (ECD)⁵⁵⁸ was adopted on 11 April 2024 and entered into force on 20 May 2024. The legislation's primary goal is to support the protection of the environment through criminal law and replace the 2008 Environmental Crime Directive.⁵⁵⁹

The new ECD specifically mentions 'ecocide' in the preamble of the Directive and introduces the category of "*qualified criminal offences*." The "*qualified criminal offences*" are punished with more severe penalties than those applicable for other criminal offences defined in the Directive. They are labelled as "*qualified*" because they cause the destruction of, or widespread and substantial damage which is either irreversible or long-lasting to, an ecosystem of considerable size or environmental value or habitat within a protected site, or cause widespread and substantial damage which is either irreversible or long-lasting to the quality of air, soil, or water.⁵⁶⁰ Article 3, as a definition of criminal offences, lists the conduct constituting a criminal offence where it is unlawful and intentional in paragraph 2. In paragraph 3, it defines the meaning of a "*qualified criminal offence*" as the following:

"3. Member States shall ensure that criminal offences relating to conduct listed in paragraph 2 constitute qualified criminal offences if such conduct causes:

(a) the destruction of, or widespread and substantial damage which is either irreversible or long-lasting to, an ecosystem of considerable size or environmental value or a habitat within a protected site, or

*(b) widespread and substantial damage which is either irreversible or long-lasting to the quality of air, soil or water."*⁵⁶¹

Interestingly, the ECD only contains the word 'ecocide' only once in the Preamble: "*Those qualified criminal offences can encompass conduct comparable to 'ecocide', which is already covered by the law of certain Member States and which is being discussed in international fora.*"⁵⁶²

⁵⁵⁸ Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC OJ L, 2024/1203, 30.4.2024 CELEX-32024L1203.

⁵⁵⁹ Directive 2008/99/EC of the European Parliament and of the Council.

⁵⁶⁰ Directive (EU) 2024/1203 Preamble, (21).

⁵⁶¹ Directive (EU) 2024/1203 Art. 3. 3.

⁵⁶² Ibid.

8.5. The future of ecocide in the European sphere

The implementation of the Directive (EU) 2024/1203 in the Member States is still pending, so we have yet to get a realistic picture of the progress made. However, explicitly including the term ecocide in the instrument is a positive change. In the context of the Directive, ecocide can be assimilated into the category of “*qualified criminal offences*”, which will undoubtedly find its way into the legislation of the Member States through transposition by the Member States. At the same time, the recognition of ecocide as an international offence must be distinguished from its direct presence in the Member States’ criminal legislation. We have already seen concrete examples of the recognition of ecocide on behalf of the European Parliament. However, as I indicated earlier, the European Union has no competence to oblige Member States to support the amendment of the Rome Statute at the international level. With the implementation of the new Directive, which entered into force in 2024, it is hoped that the shortcomings and criticisms of the previous source of legislation will not arise this time. Another positive aspect of the Directive is that it pays more attention to cooperation between MSS’ national authorities, thus allowing for more effective detection of cases with transnational elements. Several environmental offences have transnational crime elements, as Zsigmond highlighted concerning the trade of endangered species. As the author points out, a great difficulty in combating internationally operating criminal organisations and cross-border, cross-continental criminal networks is the lack of close law-enforcement cooperation. In the successfully solved cases of a transcontinental nature, there was close law-enforcement cooperation and exchange of information between the authorities of the countries involved. The key to effective action against these entities could be close cooperation between the relevant authorities.⁵⁶³ Furthermore, the rules on the criminal liability of legal persons have been reconsidered, leaving more scope for establishing the liability of companies.⁵⁶⁴

Several Member States have only made certain amendments to implement Directive 2008/99/EC so that the offences punishable under

⁵⁶³ Zsigmond, Csaba: *Védett állat- és növényfajok illegális kereskedelmével foglalkozó nemzetközi bűnszervezetek* [International criminal organisations involved in illegal trade in protected species of fauna and flora]. PhD Thesis, University of Public Service, 2022, p. 222.

⁵⁶⁴ On the criminal liability of legal persons see Fantoly, Zsanett: *A jogi személyek büntetőjogi felelőssége* [Criminal Liability of Legal Persons]. HVG Orac Publishing, Budapest, 2008.

the former ECD are regulated in various sectoral sources. Furthermore, given the diversity of procedures and the varying resources available to Member State authorities, law enforcement in environmental crime was ineffective.⁵⁶⁵ It is hoped that these problems will not arise with the new regulatory instrument and that harmonised national rules will allow effective and dissuasive actions against environmental crime.

⁵⁶⁵ Duțu (2016): pp. 94–96.

CHAPTER 9.

CLOSING REMARKS

“(D)eath of joy in nature is leading to the death of nature itself.”⁵⁶⁶

As the introductory thoughts highlighted, the very existence of humanity is threatened by environmental degradation and climate change. In recent decades, there has been a significant shift in regulatory regimes to ecological conservation, moving away from the ‘classical’ anthropocentric to an ecocentric approach that focuses on the complexity of nature. At the same time, the wide range of international treaties⁵⁶⁷ that have been adopted have not made a real difference to our relationship with the environment. With a few exceptions, multilateral international agreements cannot be considered as real success stories. Among the multilateral environmental conventions, the Vienna Convention for the Protection of the Stratospheric Ozone Layer and its Additional Montreal Protocol, which was amended several times, are prominent and can be labelled as outstanding achievements of international environmental cooperation. The Vienna Convention was the first environmental convention signed by all states and has been universal since 2009. To date, the use of ozone-depleting substances has been reduced by 99 per cent compared to the 1980s, elevating the Vienna Convention to one of the most effective environmental measures accepted worldwide.⁵⁶⁸ On the contrary, the United Nations Framework Convention on Climate Change and the additional Kyoto

⁵⁶⁶ Schaeffer, Francis: *Pollution and the Death of Man*, Tyndale House, Wheaton, IL, p. 10.

⁵⁶⁷ A reliable catalogue of environmental treaties is the “International Environmental Agreements (IEA) Database Project” available at <https://www.iea.ulaval.ca/en>.

⁵⁶⁸ UNEP: *The Vienna Convention for the Protection of the Ozone Layer*. Available at: <https://ozone.unep.org/treaties/vienna-convention>.

Protocol are undoubtedly the least successful efforts of the international community in the era of environmentalism. It is no exaggeration to say that the Kyoto Protocol is the most controversial environmental instrument. The largest emitters did not join for a long time, or never (such as the United States of America), so it could only enter into force in 2005, as it had to be ratified by at least as many industrialised countries whose combined CO₂ emissions in 1990 accounted for at least 55% of the emissions of all industrialised and transition economies. The Kyoto system was thus implemented with a significant delay compared to the original plans. Moreover, it has measured the implementation of the necessary commitments against 1990 emission levels, setting weak targets. In the global climate issue, the mainly political dilemmas of the world's largest emitting countries are being experienced on a daily basis and will significantly determine the outcome of the Paris Climate Agreement. IPCC research shows that there is scientific evidence that even a global temperature rise of 1.5°C has serious, irreversible environmental consequences. In the light of these findings, even the long-term climate targets set in Paris appear inadequate, including the efforts to keep the temperature rise below 2°C in the coming decades. Meanwhile, humanity is claiming more and more natural areas, and thanks to the seemingly unstoppable population growth, biodiversity is declining, and more and more species are disappearing permanently.

Under these circumstances, ecocide, which many believe is the solution to holding climate regulation's violators and the most severe environmental polluters to account, has resurfaced and received international support. Perhaps the central question of this book is whether ecocide can be seen as a universal solution that provides a realistic approach to prosecute those who are obstructing attempts to save our created world. We have also seen that ecocide is not just a stand-alone crime but can also be connected to other areas of environmental protection, including the realisation of environmental rights and the obstruction of Indigenous communities. At the same time, I hope I have succeeded in highlighting the terminological, scientific and legal issues surrounding the concept of ecocide while at the same time raising the question of whether we are talking about "real" law or just a concept in the making. I have deliberately chosen not to elaborate on the enforceability of ecocide, as I believe that a detailed discussion of the issue would have been beyond the scope of this book. However, the considerations on the enforceability of ecocide legislation are also core questions that must be explored later on.

9.1. Conclusions on the legal nature and concept of ecocide

On the question of whether ecocide can be regarded as law, I believe several positions can be adopted. Depending on the scope of the legislation, ecocide may be seen as a genuine legal norm under various legal concepts, taking into account the relevant sources of law, legal regulation, and its enforceability. If we consider the most general aspect of law, which is the necessity for legal regulation in response to social demand, we can certainly recognise ecocide as a “norm” within the realm of international law. This perspective is strengthened by the fact that, in the international arena, an independent body of experts has given concrete legal conceptual form to what was previously merely an idea. At the same time, it should be noted that the proposal put forward by the expert body remains just a concept until it is incorporated into hard law, as it is not accompanied by enforceability, which would elevate the law to the status of a normative instrument. The concept of ecocide becomes further convoluted when considered across different regulatory levels. In the international arena, there is no enforceable ecocide law within international regulatory instruments, human rights instruments, or the corpus of international criminal law. Concerning those states whose domestic law includes specific ecocide legislation – a number that remains quite small – we can indeed assert that the aspects of sanctionability and enforceability are being addressed. Therefore, under the domestic law of several states, ecocide is already a legitimate enforceable right.

In terms of international criminal law, a key question will be the extent to which countries will be able to move away from the historical position that the integration of environmental issues into the law of armed conflicts unnecessarily restricts the conduct of military operations. In view of this consideration, all relevant rules have placed the threshold of responsibility to exceptionally high levels, with the result that the rules adopted have had little deterrent or dissuasive effect.⁵⁶⁹

At the supranational level, the European Union’s regulation, which has been thoroughly detailed, indicates that EU Member states will, in any event, be the first region where ecocide legislation undergoes some form of legal assessment. However, the implementation of the new legislation by the member states is still pending, making it impossible to realistically

⁵⁶⁹ Freeland, Steven Robert: *Addressing the intentional destruction of the environment during warfare under the Rome statute of the international criminal court*. Doctoral Thesis, Maastricht University, 2015. p. 221. DOI: 10.26481/dis.20150610sf Available at: <https://cris.maastrichtuniversity.nl/files/5512821/4985Freeland.pdf>.

gauge how the ecocide legislation will actually be enacted in the EU-27 until the implementation period concludes. It is important to remember that, influenced by civil society and acting of their own accord, an increasing number of states are negotiating the integration of the distinct legal concept of ecocide into their legislation. The expansion of ecocide legislation as a legitimate, enforceable law can undoubtedly be anticipated in the coming years. It will be interesting to witness how environmental crime legislation evolves in the member states as a result of the new Directive. As some EU members have already accepted ecocide legislation, including Belgium and France, there are precedents for broadening the law with such a concept. Until now, the harmonisation of national environmental criminal legislation has remained limited, as member states regard criminal law – with some exceptions – as a sensitive domestic competence. Through the example of the European Union, we have seen that international debate and the strengthening of ecocide have prompted stricter action at the supranational level. At the same time, it should be noted that ecocide is only mentioned in the preamble and will be implemented in the “qualified” cases defined in the Directive.

A major contributor to the continued rise of ecocide has been the deplorable situation of Indigenous communities, whose traditions and habitats are constantly exposed to severe environmental degradation. Indigenous traditions are rooted in principles and attitudes that can guide all people, regardless of their religious beliefs, about our place in nature. At the same time, we are witnessing the rise of environmentalism in the ‘world religions’, which are united in the concept of care for creation. The recognition of the link between adequate environmental quality and a high level of human rights has also contributed to the recognition of ecocide in recent decades. Furthermore, experiencing and acknowledging the slow development of international criminal law and the difficulties of amending the Rome Statute establishing the International Criminal Court, the application of a human rights approach has led to the ‘detour’ of ecocide into the toolbox of international action.

We can also see the success of grassroots initiatives in taking environmental action. In this respect, the building of green communities, which is also part of the Sustainable Development Goals, is particularly relevant. Citizen participation can have an impact on environmental decisions, especially through the instruments of direct democracy. On the European scene, we have also seen initiatives through the European Citizens Initiatives for ecocide. Even if the expected results have not been achieved, the environmental movements are a sign of society’s ‘awakening’ to ecological protection. In addition, “*meteorological observations and plant*

phenological data” can play an essential role in shaping scientific results. Although not thought of in the context of scientific results, “*citizen science*” can be of particular importance in defining long time-scales of ecological processes, thus contributing to the provision of reliable climate data.⁵⁷⁰

International criminal law and the protection of the environment in times of armed conflict were the original ‘cradle’ of ecocide, so it is not surprising that it is still one of the primary roots of legislation. Nonetheless, at the time of writing, I believe that, at least in the international legal arena, ecocide remains more of a concept than an enforceable law at an adequate international forum. Ecocide serves as an “*umbrella concept*” encompassing the most serious forms of environmental degradation. A critical analysis of ecocide shows that each approach, be it criminal or human rights law, has its advantages and disadvantages. It would be an exaggeration to say that ecocide is not part of legislation at all. Still, I believe it is preferable to consider it a legal concept that has not yet gained universal recognition by the international community but is increasingly being used in domestic regulation by states and at the regional level, including the law of the European Union. I am sure that ecocide will not disappear again from the sight of the international community and the worsening climate crisis will strengthen the efforts already taken for the legal acceptance of ecocide.

⁵⁷⁰ Alföldi, Zoltán Péter – Cseh, László: *The role of citizen science in demonstrating the local effects of climate change*. Ecocycles, Vol. 9. No. 1, 2023, p. 13. DOI: 10.19040/ecocycles.v9i1.226.

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